

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	§	Attorney Docket No. 70614.30
Frank HERMANSEN, et al.	§	
	§	
Appln. No.: 09/391,709	§	U.S. Patent No.: 6,205,885
	§	
Filed: Sept. 8, 1999	§	Issued: March 27, 2001
	§	
For: CLIPLESS BICYCLE PEDAL		

SUPPLEMENTAL PETITION FOR RECONSIDERATION
AND ACCEPTANCE OF DELAYED PAYMENT
OF MAINTENANCE FEES UNDER 37 C.F.R. §§ 1.182, 1.183, and 1.378

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Dear Sir:

Crankbrothers, Inc., formerly known as California Crank Brothers, Inc. ("Crank Brothers"), the assignee of U.S. Patent No. 6,205,885 to Hermansen ("Hermansen '885") submits this Supplemental Petition to the Commissioner to revive Hermansen '885 and to accept delayed payment of the first maintenance fee, and renewed timely payment of the refunded second maintenance fee, for Hermansen '885. This Supplemental Petition is filed in response to the Decision on Petition mailed June 3, 2009.

Crank Brothers and the undersigned attorneys greatly appreciate the availability of Acting Assistant Commissioner for Patent Examination Policy Robert W. Bahr to meet and discuss Hermansen '885 on May 19, 2010. Crank Brothers respectfully requests consideration of this delayed Supplemental Petition submission under 37 C.F.R. §§ 1.182, 1.183, and/or 1.378 to waive the requirement to reply within two months of the Decision on Petition mailed June 3, 2009 in view of the apparently falsified record created by Crank Brothers' former patent counsel Leonard Tachner ("Tachner") or his employees. The inaccurate facts and apparently falsified documents in the record, coupled with incorrect U.S. Patent and Trademark Office ("USPTO")

records hindered the investigation as to the true facts relating to Hermansen '885. This extraordinary request is made in view of the recent discovery of Tachner or his employees' apparently fraudulent concealment of the actual facts while attempting to have the delayed maintenance fees accepted, as well as the importance of Hermansen '885 to Crank Brothers.

BACKGROUND

Hermansen '885 issued on March 27, 2001. Hermansen '885 names as inventors, the principals of Crank Brothers, namely, Carl Winefordner and Frank Hermansen. The first maintenance fee for Hermansen '885 could have been paid between March 27, 2004 and Monday March 28, 2005. The first maintenance fee was not timely paid and Hermansen '885 expired at midnight on March 29, 2005.

A Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b) (the "Petition") was filed by Tachner on October 18, 2007. A Decision (the "First Decision") dismissing the Petition was mailed to Tachner on April 9, 2008. A Request for Reconsideration of Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b) (the "Request") was filed by Tachner on July 31, 2008. A Decision (the "Second Decision") granting the Petition was mailed to Tachner on October 15, 2008. As a result of the Second Decision, Hermansen '885 was reinstated. The second maintenance fee and the required surcharge were then timely submitted by Tachner on November 6, 2008. A "corrected" Decision (the "Third Decision"), which vacated the Second Decision and denied the Petition, was mailed to Tachner on June 3, 2009 and roughly concurrently the USPTO apparently refunded to Tachner's deposit account all fees associated with the first and second maintenance fee payments. Copies of the Petition, the First Decision, the Request, the Second Decision and the Third Decision are attached as Exhibits A-E, respectively.

This Supplemental Petition for Reconsideration and the attached Declaration and Exhibits constitute a verified showing that the delay in the payment of the first maintenance fee for Hermansen '885 was unavoidable, despite the exercise of reasonable care by Crank Brothers to ensure that the first maintenance fee would be timely paid. Specifically, this Petition and the attached Declarations demonstrate that the delay in the payment of the first maintenance fee resulted from one or more of a docketing error and a clerical error committed apparently by

Tachner's staff and the apparent fabrication of evidence by Tachner or his staff to actively conceal such errors while at the same time attempting to reinstate the patent.

EVIDENCE IN SUPPORT OF PETITION

Attached to this Supplemental Petition is the Declaration of Tom Chen (Exhibit F), Crank Brothers' current patent counsel. The Chen Declaration together with Exhibits A-E and Exhibits G-Y, demonstrate that:

- (1) One or more of a docketing error and a clerical error was the cause of the delay in payment of the first maintenance fee for Hermansen '885,
- (2) Tachner or his staff intentionally deceived Winefordner, Hermansen, Crank Brothers and the USPTO as to the errors that led to the delay in payment of the first maintenance fee for Hermansen '885, and
- (3) Winefordner, Hermansen and Crank Brothers have at all times exercised due care and been diligent in pursuing the reinstatement and payment of maintenance fees for Hermansen '885.

ARGUMENT IN SUPPORT OF PETITION GRANT

35 U.S.C. § 41(c)(1) and 37 CFR § 1.378(b) provide that the Director may accept the payment of any maintenance fee due on a patent after the expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable.

As noted in the Third Decision, 37 CFR § 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

"A showing that . . . reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee . . . became aware of . . . the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which the patentee became aware of the expiration of the patent."
(Third Decision, page 2).

The Third Decision also states that:

"In order for a party to prove unavoidable delay, the Office requires the party demonstrate the party exercised the 'care or diligence tha[t] is generally used and observed by prudent and careful men in relation to their most important business.'" (Third Decision, page 2).

As noted in MPEP § 711.03(c)(2) decisions on reviving abandoned applications on the basis of "unavoidable" delay follow the reasonably prudent person standard to determine if a delay was unavoidable. This section of the MPEP goes on to note that in the context of the reasonably prudent person standard:

"The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. (Emphasis added)

Also as noted in MPEP § 711.03(c)(2):

"A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of 'unavoidable' delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care."

1. CRANK BROTHERS RELIED UPON TACHNER TO PAY THE MAINTENANCE FEES FOR HERMANSEN '885

As stated in the Declarations of Carl Winefordner and Frank Hermansen submitted with the Request, Crank Brothers engaged Tachner to provide various services with respect to the preparation, prosecution and maintenance of Crank Brothers' U.S. and corresponding foreign patents. While the degree of reliance by Crank Brothers on Tachner for services related to the preparation and prosecution of patent matters varied, one thing was consistent -- Tachner was

always responsible for the docketing and payment of maintenance fees and annuities with respect to all of Crank Brothers' U.S. and foreign patent matters.

With respect to Hermansen '885, Winefordner and Hermansen wrote the underlying application while Tachner edited the application and wrote the claims. Winefordner and Hermansen filed the application and it was allowed on the first action. Winefordner and Hermansen paid the issue fee and thereafter met with Tachner and his staff and requested that Tachner assume responsibility for Hermansen '885 including the docketing and payment of maintenance fees. Obviously, once the issue fee was paid, the only action left to be taken with respect to Hermansen '885 was the payment of the first, second and third maintenance fees. If Crank Brothers had not intended for Tachner to handle the timely payment of maintenance fees for Hermansen '885, there would have been no reason for Winefordner and Hermansen to meet and request that Tachner assume further responsibility for the patent. Indeed, according to the Winefordner Declaration, Winefordner stated that:

"Our plan was to turn over this patent to Mr. Tachner as soon as we received the first Office Action, but as it turned out, this patent was approved without any Office Actions. So Frank and I paid for the patent issue fee directly, and then met with Mr. Tachner's secretary, Janis Foreman, and requested that the Law Office of Leonard Tachner take over further responsibility for this patent including future maintenance fees." (Winefordner Declaration, paragraph 4, pages 2-3).

Winefordner also stated that:

"I am 100% sure that I gave Mr. Tachner's secretary, Janis Foreman, instructions to pay the maintenance fees on our '885 patent and I am without any doubt sure that I never told her that I or we would pay it ourselves. I specifically told Ms. Foreman this in person while Frank and I visited the law office." (Winefordner Declaration, paragraph 5, page 3).

Finally, Winefordner stated that:

"Frank [Hermansen] and I specifically communicated to the Law Offices of Leonard Tachner to take over patent responsibilities and pay the maintenance fees of the '885 patent." (Winefordner Declaration, paragraph 11, page 5).

According to the Hermansen Declaration, Hermansen substantiates the statements made by Winefordner as follows:

"I recall that we paid for the patent issue fee directly and then met with Mr. Tachner's secretary, Janis Foreman, to request that the Law Office of Leonard

Tachner take over all responsibility for this patent including payment of future maintenance fees." (Hermansen Declaration, paragraph 3, page 2).

"We made our instructions and intentions very clear to Mr. Tachner's secretary." (Hermansen Declaration, paragraph 4, page 2).

"I am completely positive that we requested the Law Office of Leonard Tachner to pay the maintenance fees on this patent as I was present during this conversation." (Hermansen Declaration, paragraph 5, page 2).

In view of the Winefordner and Hermansen Declarations, it is clear that Crank Brothers was never confused about whose responsibility it was to pay the maintenance fees for Hermansen '885 -- Tachner was responsible at all times. As will be shown below, Tachner was not confused either -- he knew he was responsible for those maintenance fees.

It is important to note that Hermansen '885 is the brightest gem in Crank Brothers' American success story and it has and does protect a significant portion of Crank Brothers' domestic bicycle pedal revenue from substantial foreign competition headquartered in, for example, Japan and France.¹ Attached as Exhibit G is a copy of an email from Winefordner to Tachner dated March 27, 2008 which states that:

"There are many millions of dollars of revenue potentially riding on [the reinstatement of Hermansen '885], because I'm sure that we will be copied heavily if the bike industry figures out that we don't have an active patent. Last year we sold over \$7,000,000 worth of pedals under this patent, and this year it will be more. It is the majority of our business still."

Thus, based solely on the Declarations of Winefordner and Hermansen submitted with the Request, the record is clear that Crank Brothers never informed Tachner or his staff that Crank Brothers would pay the maintenance fees for Hermansen '885 or any of Crank Brothers' other U.S. and foreign patents handled by Tachner. The USPTO, however, was apparently misled by the Declaration of Janis Foreman submitted with the Petition and the Declaration of Leonard Tachner submitted with the Request which are discussed below, as to the facts surrounding the

¹ It should be noted that Crank Brothers became part of a foreign-owned entity after January, 2008 after the events leading to the Petition and the filing of the Petition itself. Crank Brothers still has the same principals and substantially the same manufacturing facilities in the U.S. as before this change, and still qualifies for small entity status.

delayed maintenance fee payment in Hermansen '885 when issuing the First Decision and the Third Decision.

2. TACHNER ALLEGED THAT CRANK BROTHERS ASSUMED RESPONSIBILITY FOR PAYMENT OF MAINTENANCE FEES FOR HERMANSEN '885

According to the Petition, which was authored by Tachner, the delay in payment of the first maintenance fee for Hermansen '885 was allegedly due to confusion between Tachner's staff and Crank Brothers as to who would pay the maintenance fee. In an attempt to document the alleged confusion, the Petition included the Declaration of Janis Foreman, Tachner's Office Manager and secretary, which stated that:

"[B]efore the first annuity became due (September 27, 2004) I entered a statement on the face of the file that the client would pay the annuities . . . As shown in the attached Exhibit C which is a photocopy of the face of our Docket No. SLIP-21, it is noted the client will pay the maintenance fee. All of the issued patent file faces for this client show that the client will pay their own annuities as of mid-2004 (see sample photocopies attached as Exhibits D1-D6). I recall doing so based on a discussion with the client indicating that they would pay their own annuities." (Foreman Declaration, paragraph 4, page 2).

As will be demonstrated below, the above-noted statement in the Foreman Declaration was apparently false and was presumably made in an apparent attempt to fraudulently conceal the cause of the error that led to the late payment of the first maintenance fee for Hermansen '885.

The above-noted apparently false statement in the Foreman Declaration was extremely important to the effort to reinstate Hermansen '885. Indeed, the First Decision stated that:

"Based on the facts in the record, it appears the most likely explanation for petitioner's failure to pay the fee is:

- (1) Petitioner informed the law firm petitioner would pay maintenance fees in the future,
- (2) Petitioner failed to take steps to ensure the fees would be timely paid, and
- (3) Petitioner failed to pay the fees." (First Decision, page 3).

The First Decision also stated that:

"If petitioner never informed the law firm that petition[er] would pay the fees, then Ms. Foreman's conduct does not appear to have been reasonable. Ms. Foreman did not simply make a typographical or minor clerical error. Instead near mid-2004, she intentionally changed most, if not all of petitioner's files, to indicate petitioner would be paying the fee.

The Office notes Ms. Foreman has stated, 'All of the issued patent files for this client show that the client will pay their own annuities as of mid-2004.' However, the front of the files for Patent No. 6,851,189, and Patent No. 7,225,703, render the comment ambiguous. The front of each file appears to indicate the 'client to pay' entries were made after mid-2004. For Patent No. 6,851,189, the entry indicating 'client to pay annuities' follows the entry indicating the issue fee was paid December 30, 2004. For Patent No. 7,225,703, the entry indicating 'client pays annuities' follows the entry indicating the issue fee was paid April 16, 2007. If Ms. Foreman made an error, it appears she made the same error on multiple occasions. Any request for reconsideration should be accompanied by a full discussion of each occasion Ms. Foreman changed any of petitioner's files to indicate petitioner would pay the fee." (emphasis in original) (First Decision, pages 4-5).

The Third Decision also refers to the apparently false statement in the Foreman Declaration:

"In this case, the facts are clear that petitioner initially retained Tachner and relied on Tachner to inform petitioner of when maintenance fees became due for petitioner's patents. However, at some point prior to September 22, 2004, when the first maintenance fee became due, an entry was made in the docket records that 'the client will pay their own annuities.' The record is not clear that an error in docketing the payment of the maintenance fees occurred. The facts as set forth in the Foreman declaration do not show that any error in docketing was made by the party responsible for maintaining the docket records. What the facts of record show is that there was confusion between the client and the attorney over who would pay the maintenance fee." (Third Decision, page 6).

"It is well established that failure in communications between a client and his or her attorney does not constitute unavoidable delay. Here it would appear that a misunderstanding has occurred over who would be responsible for tracking and paying the maintenance fee. The failure in communication is not considered to be unavoidable error." (Third Decision, page 7).

Thus, it is clear that the apparently false statement in the Foreman Declaration alleging that there was confusion between Tachner's office and Crank Brothers over who would track and pay the maintenance fees for Hermansen '885 were the key "facts" relied upon in the First and Third Decisions in which the Petition to reinstate Hermansen '885 was denied.

In addition to the apparently false statement in the Foreman Declaration, the Request included the Declaration of Leonard Tachner, which also included potentially false statements concerning Hermansen '885. Specifically, the Tachner Declaration states that:

"Because I did not file or prosecute the '885 patent, we have no file history for it. Apparently, Messrs. Winefordner and Hermansen still have the prosecution documents for the '885 patent. We have made a substitute file in which there is only a copy of the issued patent and a copy of our October 2007 petition. Any and all documents that might have been received by our office from the USPTO in regard to the '885 patent should be contained in that file, but there are none."
(Tachner Declaration, paragraph 6, page 3).

Contrary to the Tachner Declaration and as stated in the Chen Declaration, Tachner's file for Hermansen '885 contains a stamped postcard receipt dated May 17, 2004 which confirms that Tachner changed the correspondence address to ensure receipt of USPTO correspondence for Hermansen '885. A copy of this stamped postcard receipt is attached as Exhibit H. It is important to note that Tachner filed the change of correspondence address documentation during the time the window was open for payment of the first maintenance fee for Hermansen '885, *i.e.*, between March 27, 2004 and March 28, 2005. Tachner presumably changed the correspondence address for Hermansen '885 so he could receive reminders regarding the maintenance fees, which he was responsible for paying, directly from the USPTO.

Therefore, the Tachner Declaration was factually incorrect in stating: (i) there was nothing in Tachner's file for Hermansen '885 besides the patent, and (ii) there was confusion as to who was responsible for the maintenance fee payment. In reality, no confusion existed at the time. Thus, it is clear that Tachner was responsible for the payment of maintenance fees for Hermansen '885 at the time the first and second maintenance fees were due.

3. TACHNER APPARENTLY FRAUDULENTLY CONCEALED THE ERROR THAT LED TO THE LATE PAYMENT OF THE FIRST MAINTENANCE FEE FOR HERMANSEN '885

On or about April 14, 2009, at the request of Crank Brothers, Tachner transferred all of his files concerning Crank Brothers' patent and trademark matters to Haynes and Boone, LLP. Consequently, Haynes and Boone now has custody of Tachner's actual files including the original file covers that were prepared by Tachner or his staff in connection with the filing,

prosecution and maintenance of Crank Brothers' U.S. patent filings. Attached as Exhibits I-N are true and correct photographs of the file covers that Tachner or his staff prepared in connection with the following U.S. Patents owned by Crank Brothers:

U.S. Patent No. 5,676,529
U.S. Patent No. 6,027,319
U.S. Patent No. 5,857,509
U.S. Patent No. 6,059,245
U.S. Patent No. 6,851,189
U.S. Patent No. 7,225,703.

Upon receipt of the transferred patent files from Tachner, Crank Brothers' current patent counsel placed a tracking label in the upper left corner and an attorney docket number in the upper right corner of the file covers. As a result, the notations placed on the file covers by Tachner or his staff remain untouched. In this regard, see paragraph 7 of the Chen Declaration.

With respect to the notations placed on the file covers by Tachner or his staff, Exhibits I-N correspond exactly to Exhibits D1-D6, respectively, to the Foreman Declaration, except for one significant detail. Specifically, the handwritten notations of "client will pay", "client pays", "client to pay annuities", or "client pays annuities" that appear in the right-hand column next to the due dates for the annuities for such patents as well as the semi-circular bracket shown in Exhibits D1-D6 to the Foreman Declaration are absent from the photographs in Exhibits I-N. The photographs in Exhibits I-N also demonstrate that there are no alterations, erasures, white-outs or cover ups on the file covers. This is also confirmed by paragraph 7 of the Chen Declaration. Consequently, the only explanation for the discrepancy between Exhibits I-N and Exhibits D1-D6 to the Foreman Declaration is that Tachner or his staff made photocopies of the respective file covers, entered the handwritten notations on the photocopies, made photocopies of the hand-altered photocopies and submitted them under oath as being true copies of the file covers. It is clear from Exhibits I-N that the handwritten notations shown in Exhibits D1-D6 to the Foreman Declaration were never actually written on the file covers.

Attached as Exhibit O is a photograph of the cover of Tachner's file for Hermansen '885. Exhibit O corresponds exactly to Exhibit C to the Foreman Declaration, except for the tracking label and attorney docket number placed on the file cover by Crank Brothers' current patent counsel. Contrary to Exhibits I-N, Exhibit O does show that the handwritten notation "client to pay annuities" was actually written on the file cover and was subsequently crossed out (perhaps

immediately after being written) when Tachner attempted to pay the first maintenance fee with the Petition on October 18, 2007. It follows then that if the handwritten notations shown in Exhibits D1-D6 to the Foreman Declaration had actually been written on the file covers, when the maintenance fees were later paid by Tachner, the handwritten notations would be crossed out like they were on Exhibit O. This inconsistency also supports the conclusion that rather than being authentic copies of the file covers of Tachner's files concerning Crank Brothers' U.S. patents, Exhibits D1-D6 to the Foreman Declaration appear to have been intentionally falsified - presumably to support Tachner's contention that there was confusion as to whether Tachner or Crank Brothers was responsible for the tracking and payment of the first maintenance fee for Hermansen '885. Consequently, it appears that Tachner intentionally fraudulently concealed from Crank Brothers and the USPTO the docketing or clerical error committed by Tachner's staff that led to the delay in the payment of the first maintenance fee for Hermansen '885. Since the file covers of Exhibits D1-D6 to the Foreman Declaration bearing handwritten notations have been shown to have been apparently falsified, the veracity of the allegedly, corroborative, handwritten docket sheets attached to the Foreman Declaration as Exhibits A and B1-B3 are also suspect and will not be commented upon herein.

Tachner and his staff apparently had clear motivation to conceal the docketing or clerical error from Crank Brothers and the USPTO. Tachner and his staff were well aware of the significance of Hermansen '885 to Crank Brothers' competitive position in the bicycle pedal industry. Indeed, Tachner stated in the Request that:

"[I]f this request for reconsideration of the petition is found lacking, I am personally at risk for a staggering liability which would likely terminate a 36-year career . . . and negatively affect the rest of my life." (Request, pages 2-3).

Further, during the course of the maintenance history concerning Hermansen '885 there were four documents that showed a negative effect on the status of Hermansen '885. These documents are:

1. The Maintenance Fee Statement that would have been routinely mailed on or about September 27, 2004 (three and one-half years after the issue date of Hermansen '885) to Tachner as the "Fee Addressee";
2. The Notice of Patent Expiration dated April 27, 2005, a copy of which is attached as Exhibit P;

3. The First Decision; and
4. The Third Decision.

Each of these documents was properly addressed to Tachner, but Tachner claims to have never received any of them (See paragraph 5 of the Tachner Declaration and paragraph 5 of the Chen Declaration). On the other hand, the only positive document following the issuance of Hermansen '885, namely the Second Decision, was received by Tachner. In light of Tachner's apparent intentional falsification of documents and potentially active concealment of the error in the payment of the first maintenance fee for Hermansen '885, it stretches credulity to believe that Tachner and his staff did not receive even a single one of the four above-noted documents that bore negatively on the status of Hermansen '885. Instead, what seems likely is that Tachner or his staff did receive such documents but destroyed them to further the concealment of errors concerning Hermansen '885.

As further evidence of the apparent concealment of the error concerning Hermansen '885 by Tachner or his staff, it should be noted that Winefordner and Hermansen were completely unaware of the contents of the Petition, the Foreman Declaration, the Request and the Tachner Declaration. Instead, Winefordner and Hermansen had only been permitted to review their own Declarations, and therefore could not have possibly understood the facts and positions that Tachner stated (and those he omitted) in pursuing the reinstatement of Hermansen '885 by the filing of the Petition and the Request. In this regard, see Winefordner's email dated July 14, 2008 to Tachner attached as Exhibit Q which states that "[w]e don't know what you included in the petition." Also, see the Declaration of Carl Winefordner ("Winefordner II Declaration") attached hereto as Exhibit R.

Still further, attached as Exhibits S and T are the transaction histories for Crank Brothers' U.S. Patent Nos. 5,676,529 and 5,857,509, respectively. As noted in Exhibit S, U.S. Patent No. 5,676,529 expired twice, namely on November 20, 2001 and on November 16, 2005. Also, a Petition to Accept Late Payment of Maintenance Fee was filed on October 3, 2007 and a Decision on the Petition was mailed on October 3, 2007. As noted in Exhibit T, U.S. Patent No. 5,857,509 expired on February 14, 2007, a Petition to Accept Late Payment of Maintenance Fee was filed on October 3, 2007 and a Decision on the Petition was mailed on October 3, 2007. As noted in the Winefordner II Declaration, Tachner never told Crank Brothers that U.S. Patent No.

5,857,509 had expired nor that U.S. Patent No. 5,676,529 had expired twice. Rather, Tachner hid these adverse events and correspondence from the USPTO from Crank Brothers, although in those cases he was able to revive the expired patents without Crank Brothers' involvement or knowledge (Winefordner II Declaration, at paragraphs 4-6).

As noted in paragraph 8 of the Chen Declaration, every single one of the Notices of Patent Expiration, Petitions to Accept Late Payment of Maintenance Fee and Decisions on Petition for U.S. Patent Nos. 5,676,529 and 5,857,509 was missing from the files Tachner transferred to Crank Brothers' current patent counsel. In addition, the Petition and the Request are missing from Tachner's file for Hermansen '885. Finally, as noted in paragraph 8 of the Chen Declaration, in a telephone conversation between Chen and Tachner on July 7, 2010, Tachner confirmed that he had transferred to Crank Brothers' current patent counsel all of his files and documents concerning Crank Brothers' patent matters. Every single one of these documents, especially those prepared by Tachner or his staff, should be in the files. The absence of these documents from Tachner's files certainly suggests they were intentionally removed in furtherance of the concealment from Crank Brothers and the USPTO of the errors concerning Hermansen '885 and other patents owned by Crank Brothers. When an attorney intentionally conceals various substantive mistakes from his client, fairness requires that the client not be adversely prejudiced by requiring diligent action until after the client understands the extent of the deceit. *In re Lonardo*, 17 U.S.P.Q.2d 1455 (Com'r Pat. 1990).

Finally, attached as Exhibit U is a copy of an email from Janis Foreman of Tachner's office to Winefordner dated October 3, 2007. Exhibit U demonstrates that Tachner and/or his staff discovered several concurrent maintenance fee problems regarding Crank Brothers' U.S. patents for which Tachner was responsible, and attempted to correct these problems without explaining to Crank Brothers that the affected patents had expired. Exhibit U, of course, came well after mid-2004 when the Foreman Declaration alleges Crank Brothers was responsible for all of Crank Brothers' annuity payments. Importantly, Exhibit U does not state that Crank Brothers missed the maintenance fee deadline as it would if they were responsible, but rather, Tachner takes responsibility for the missed maintenance fees and indicates corrective action has been taken (without Crank Brothers' input) to "correct the situation." Why? Because Tachner was responsible for all maintenance fee payments. Attached at Exhibit V is a list of Crank

Brothers' U.S. and foreign patent matters being handled by Tachner. The list is dated October 3, 2007 and was attached to the email shown in Exhibit U. As will be noted, the list shown in Exhibit V includes the due dates for all three maintenance fee payments for Hermansen '885.

Exhibit V also reveals another apparently false statement in the Foreman Declaration. Specifically, the Foreman Declaration states that:

"Around March 2001, when the Firm received the above-captioned issued patent, I supervised Miller to assure that entries were made in the docket system for September 27, 2004 (3.5 yr annuity), September 27, 2008 (7.5 yr annuity) and September 27, 2012 (11.5 yr annuity) deadlines for payment of the maintenance fees, and to send a letter to the client explaining the requirement for paying the maintenance fees." (Foreman Declaration, paragraph 3, page 2).

While Hermansen '885 was issued on March 27, 2001, it seems likely that Tachner did not receive instructions from Crank Brothers to do anything with respect to Hermansen '885 until sometime between March 16, 2004 and March 26, 2005. Specifically, the list in Exhibit V demonstrates that Tachner's system for naming files for Crank Brothers was to designate the client with the term "SLIP" and to then open new matters in a chronological sequence. Had Tachner actually received Hermansen '885 around March 2001 and opened a matter for it so that the maintenance fees could be docketed, Tachner's matter name for it would have been SLIP-6. This is because Tachner's matter number SLIP-5 was for U.S. Patent Application No. 09/679,078 filed May 14, 1998 and Tachner's matter number SLIP-6 was for U.S. Patent No. 6,851,189 which issued from U.S. Patent Application No. 10/375,243 filed February 27, 2003.

Instead, as shown in Exhibit V, Tachner's matter number for Hermansen '885 was "SLIP-21". Tachner's matter number SLIP-20 was for U.S. Patent No. 7,225,703 which issued from U.S. Patent Application No. 10/802,105 filed March 16, 2004 and Tachner's matter number SLIP-22 was for U.S. Patent Application No. 11/138,134 filed March 26, 2005. Consequently, what seems likely is that Tachner or his staff received Hermansen '885 from Crank Brothers shortly before the filing of the Change of Correspondence Address evidenced by the stamped postcard receipt dated May 17, 2004 and attached as Exhibit H. As noted above, Tachner filed the Change of Correspondence Address during the time the window was open for payment of the first maintenance fee for Hermansen '885, i.e. between March 27, 2004 and March 28, 2005. The only logical conclusion is that Crank Brothers gave Hermansen '885 to Tachner and

requested that he file the Change of Correspondence Address so that Tachner could receive maintenance fee reminders directly from the USPTO and pay such maintenance fees when due.

The apparently false statement in the Foreman Declaration about the timeframe in which Tachner or his staff set up a file and docketed the maintenance fees for Hermansen '885 is another example of how Tachner submitted apparently false statements in an effort to conceal the error that led to the late payment of the first maintenance fee for Hermansen '885.

4. IF TACHNER HAD NOT APPARENTLY FRAUDULENTLY CONCEALED THE ERROR THAT LED TO THE LATE PAYMENT OF THE FIRST MAINTENANCE FEE FOR HERMANSEN '885, IT WOULD HAVE LIKELY BEEN REINSTATED

As noted above, MPEP § 711.03(c)(2) states that:

“A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of ‘unavoidable’ delay, provided it is shown that:

(A) the error was the cause of the delay at issue;

(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and

(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.”

As detailed above, the docketing or clerical error was clearly the cause of the delay in the payment of the first maintenance fee for Hermansen '885.

The Tachner Declaration submitted with the Request states that:

“Over a period of almost thirty years I personally trained Ms. Foreman to carry out numerous duties in my practice. Included among these duties is that of being responsible for the timely payment of maintenance fees for our clients’ issued U.S. patents. I have also instructed her in communicating with clients in a timely manner to learn whether they wish to have us pay maintenance fees for them so that we can anticipate being reimbursed for that payment and being paid a reasonable service fee. Over that period of time I have come to rely on Ms. Foreman to properly carry out these duties, she has paid hundreds of maintenance

fees to the U.S. Patent and Trademark Office.” (Tachner Declaration, paragraph 2, pages 1-2).

The Tachner Declaration submitted with the Request also states that:

“Ms. Foreman has been a hard-working, dedicated and loyal employee of my firm for decades. I’ve not previously had reason to doubt her word or question her actions. Ms. Foreman has through many years of her service to the firm and in her relation with clients over that period, convinced me that she could be relied upon to communicate unambiguously with clients and to follow instructions from me and from clients in regard to what to pay or not pay to the Patent Office in behalf of clients.” Tachner Declaration, paragraph 7, page 4).

Thus, it is apparent from the Tachner Declaration that there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and the employee (Ms. Foreman) was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. Consequently, had Tachner admitted in the Petition or the Request that his staff had made at least one of a docketing and clerical error that led to the delay in the payment of the first maintenance fee for Hermansen ‘885, it would have been likely that Hermansen ‘885 would have been reinstated.

In his attempts to reinstate Hermansen ‘885, Tachner was then faced with the prospect of admitting the error but was likely concerned that if the reinstatement effort was unsuccessful, the admission of the error could be used against him in any resulting malpractice claims brought by Crank Brothers. Instead of doing the right thing, Tachner or his staff appears to have chosen to cover up the error by submitting apparently falsified documents and testimony.

5. TACHNER CONCEALED FROM CRANK BROTHERS THE REFUND OF MAINTENANCE FEE PAYMENTS FOR HERMANSEN ‘885

In connection with the unsolicited Third Decision, on or about June 4, 2009, the USPTO refunded to Tachner’s deposit account the fee payments in connection with the first and second maintenance fees for Hermansen ‘885. Tachner had previously invoiced Crank Brothers and had received payment from Crank Brothers for the first and second maintenance fees for Hermansen ‘885 (Winefordner II Declaration, paragraph 8).

To date, Tachner has not informed Crank Brothers that the fees have been refunded to his deposit account and he has failed to reimburse Crank Brothers for such fees (Winefordner II Declaration, paragraph 8). Regardless of whether or not Tachner actually received the Third Decision, he certainly should have been aware that the first and second maintenance fees had been refunded to his USPTO deposit account. He also should have refunded these fees to Crank Brothers.

Thus, in addition to apparently concealing the error and submitting apparently falsified documents and testimony in connection with his attempts to reinstate Hermansen '885, Tachner also failed to notify Crank Brothers that the USPTO refunded the first and second maintenance fees to Tachner's deposit account payments and he also failed to refund such fees to Crank Brothers.

6. CRANK BROTHERS SHOULD NOT BE BOUND BY TACHNER'S CONDUCT

As demonstrated above, Tachner or his staff appear to have tampered with the file covers that were exhibits to the Foreman Declaration submitted with the Petition in a successful attempt to create the illusion that there was confusion between Crank Brothers and Tachner or his staff about who was responsible for payment of the maintenance fees for Hermansen '885. In reality, there was no confusion—Tachner was responsible, but apparently his staff had simply made a clerical error likely in docketing about who was responsible. Crank Brothers should not be punished in view of its diligent efforts regarding Hermansen '885 and the unknown and unforeseeable actions of Tachner and his staff, given that Tachner, and possibly his employees, acted outside the scope of his authority, acted without knowledge of Crank Brothers as to portions of the filings regarding the reinstatement of Hermansen '885, misled Crank Brothers as to the specifics of the Petition and the Request, failed to make other filings authorized by Petitioners (*i.e.*, the maintenance fees), failed to keep Crank Brothers updated on the status of Hermansen '885, apparently failed to notify Crank Brothers about the refunded first and second maintenance fees and to refund these fees, and apparently acted outside the scope of his professional responsibilities. While the general rule is that an attorney's conduct is chargeable to his client, the general rule has an important exception as noted by the Commissioner of Patents and Trademarks in *In re Lonardo*, 17 U.S.P.Q. 2d 1455 (Com'r Pat., 1990):

“When an attorney intentionally conceals a mistake he has made, thus depriving the client of a viable opportunity to cure the consequences of the attorney’s error, the situation is not governed by the . . . rule . . . for charging the attorney’s mistake to his client.” (17 U.S.P.Q.2d at 1458).

In a manner similar to the facts of the *In re Leonardo* decision, here Tachner and/or his staff appear to have knowingly and intentionally misled Crank Brothers and the USPTO as to the error that led to the late payment of the first maintenance fee for Hermansen ‘885 as well as the contents of his submissions over the course of the revival efforts.

Now that the record has been clarified as to the actual facts concerning the understanding of Tachner and his staff regarding the payment of maintenance fees for Hermansen ‘885, it should be clear that the unavoidable error that led to the late payment of the first maintenance fee for Hermansen ‘885 was not caused or committed by Crank Brothers. Rather, Crank Brothers relied on Tachner’s apparently reasonable procedures, but a docketing or clerical error occurred which error was compounded by Tachner’s or his staff’s efforts to apparently conceal the nature of the error. Crank Brothers was unable to discover this problem until Hermansen ‘885 and another patent entrusted to Tachner were both roughly concurrently discovered to have lapsed due to failure to pay maintenance fees. These lapses by Tachner and his staff occurred despite Crank Brothers’ instructions to Tachner and his staff to pay all such maintenance fees and to confirm with Crank Brothers about such payments in advance – in case Crank Brothers elected to abandon any of its patent rights. It was only at that juncture that Crank Brothers had any idea that Tachner’s procedures were either not entirely reliable or were not followed, and that an error or two had occurred. But even then, Crank Brothers still did not understand that Tachner’s attempts to revive Hermansen ‘885 were also unreliable at best – and in reality based on apparently falsified documents and testimony apparently designed to conceal reality from Crank Brothers and the USPTO. Because Crank Brothers was not able to review the Petition, the Request, the Foreman Declaration, and the Tachner Declaration, given that Tachner never provided drafts or copies of these documents, Crank Brothers had no reason to suspect these submissions were inaccurate and could not have discovered the incorrect facts submitted by Tachner. (See, e.g., Exhibit Q).

Thus, it was not until a few weeks ago that Crank Brothers and current counsel of record discovered the apparently falsified documents and testimony previously submitted by Tachner in

connection with the Petition and the Request as well as the accompanying Declarations of Foreman and Tachner. This discovery permitted Crank Brothers with an opportunity to understand what Tachner and his staff had actually done and what (erroneous) facts had actually been presented to the Patent Office in connection with the Petition and the Request. In view of Tachner's, and his staff's, apparently falsified submissions in connection with the maintenance fee payments and attempted revival of Hermansen '885, it would contravene the basic notions of equity for Crank Brothers to be forced to stand in Tachner's shoes.

Indeed, in concert with the decision of the Commissioner of Patents and Trademarks in *In re Lonardo*, the USPTO should ignore the time period of delay caused by prior counsel's deception, and should instead look only to Crank Brothers' intent and prompt action once aware of the true nature of the problem. *In re Lonardo*, 17 U.S.P.Q. 2d 1455 (Com'r Pat., 1990). Further, Crank Brothers' request for consideration is based on the recently discovered inaccurate facts submitted in the Petition and the Request, coupled with the corrected facts now diligently discovered and submitted in connection with reviving Hermansen '885 for late payment of the first and second maintenance fees with surcharges and petition fees now past due, despite the exercise of reasonable care to ensure that the fees would be timely paid. Despite the procedures in place by Tachner, as submitted in the Petition and Request including the docketing of USPTO deadlines and monitoring of same, the docketing notation and possibly other errors by Tachner's staff nullified the existing checks and balances he established to ensure timely payment of the maintenance fees—upon which Crank Brothers reasonably relied as shown herein. At no point in time did Crank Brothers ever intend for their most important patent, Hermansen '885, to lapse for any reason (See Exhibit Q, stating to Tachner on July 14, 2008 that “we never intended this patent to go inactive.”).

7. PETITIONERS HAVE BEEN DILIGENT: THE ADDITIONAL DELAY FROM MISLEADING PRIOR COUNSEL ACTS AND INCORRECT USPTO RECORDS FROM THEIR DISCOVERY TO THE PRESENT WAS UNAVOIDABLE

To clarify and support that the delay from issuance of the unsolicited Third Decision was also unavoidable, Crank Brothers provides additional new facts below regarding the delay from that time to the submission of this Supplemental Petition. Initially, Tachner claims to have never

received the unsolicited Third Decision denying the Request, nor would anyone have been expecting such a document. Despite the Correspondence Address correctly identifying Tachner's current office address, Tachner told Crank Brothers that he never received any further USPTO communications regarding Hermansen '885 to date despite the correspondence address being his then current office address. (Chen Declaration, paragraphs 5-6, pages 1-2).

Instead, Crank Brothers' Italian patent counsel APTA sent an email to Winefordner on December 15, 2009 to which was attached a list of Crank Brothers' patents which list indicated that Hermansen '885 was "granted/abandoned." See attached Exhibit X, which includes a copy of this email and the attached list. Crank Brothers replied to APTA by email on December 18, 2009 and stated that Hermansen '885 is not abandoned because the previous attorney [Tachner] made a mistake and did not pay the maintenance fee on time which caused it to be briefly shown as abandoned, but that the attorney had petitioned to the USPTO and was able to pay the fee and make the patent active again. See attached Exhibit X which includes a copy of Crank Brothers' email sent on December 18, 2009. Thus, even up to this point, Crank Brothers had no reason to suspect that a clock was ticking or that Hermansen '885 was again in jeopardy.

On January 21, 2010, APTA sent an email to Tom Chen and asked if any confirmation existed from the USPTO about the late payment of the maintenance fees for Hermansen '885. (See Exhibit Y which includes a copy of this email, and the Chen Declaration, paragraph 3, page 1). The same day, Mr. Chen sent an email to his assistant Ms. Annie McNally and asked her to check on APTA's request for information about the late payment of the maintenance fees for Hermansen '885 (See Exhibit Y). On that same day, Ms. McNally learned that the Request appeared to have ultimately been denied in June, 2009, that a decision to that effect had been mailed to Tachner, and that based on USPTO records Hermansen '885 had expired on March 27, 2009" (see Exhibit Y, the Chen Declaration, paragraph 4, page 1 and Exhibit 1 to the Chen Declaration). As shown in Exhibit W, the erroneous expiration date for Hermansen '885 is to this day still shown in the records of the USPTO. Thus, as of January 21, 2010, Mr. Chen and Crank Brothers understood that Hermansen '885 had somehow expired or gone abandoned again on March 27, 2009 based on USPTO records (Chen Declaration, paragraph 4, page 1). It would therefore have been possible to file a Petition to Revive under the unintentional standard since the lapse had been within the last two years (*i.e.*, from March 27, 2009 one would have until

March 27, 2011). The file history for Hermansen '885 was not then and is not now available electronically on the USPTO PAIR system.

The official file history for Hermansen '885 was ordered on January 22, 2010. As shown in Exhibit Y, Ms. McNally contacted the USPTO on January 25, 2010 to confirm when Hermansen '885 actually expired given the confusing online history for Hermansen '885. According to Exhibit Y, she was told by Michael Eason at the Petitions Office that he could not determine the facts since there was not much available electronically, and that he would pull the file and call Ms. McNally back. Several weeks passed and as shown in Exhibit Y, on February 16, 2010, Ms. McNally told Mr. Chen she was checking up on the request for information, but that the USPTO had been closed for four days due to a snow emergency. As also shown in Exhibit Y, a message was left with the Petitions Branch by Ms. McNally on February 17, 2010 after she was informed that Steven Brantley had responsibility for Hermansen '885.

On February 17, 2010, Mr. Chen spoke with Tachner who stated that he assumed Hermansen '885 had been reinstated because the Petition for Acceptance of Delayed Payment of Maintenance Fees was granted, which was the last he had heard about this matter. (Chen Declaration, paragraph 5, pages 1-2). Tachner also stated that he was unaware of any fees being credited to his USPTO Deposit Account or the subsequent unsolicited Third Decision denying the requested relief. (Chen Declaration, paragraph 5-6, pages 1-2).

On February 26, 2010, the file history for Hermansen '885 was received from the USPTO and transmitted to Randall Brown, Chair of Haynes and Boone, LLP's IP and Technology Transactions Section, for his review. On March 2, 2010, Mr. Brown acknowledged receipt, and between March 7 and April 1, 2010 Mr. Brown reviewed the file history and conducted research and held various discussions to determine courses of action for reviving Hermansen '885. On April 1, 2010, Mr. Brown contacted Mr. van Horn to discuss the situation.

On April 27-28, 2010, Mr. van Horn contacted the USPTO to discuss an appropriate avenue to proceed to rectify the injustice of the expiration of Hermansen '885 and the undersigned attorneys were asked to assist with this effort. Mr. van Horn subsequently arranged the meeting noted above, which was held at Mr. Bahr's earliest convenience on May 19, 2010. Additional evidence has been obtained periodically since May 19 from Crank Brothers, whose records have been partially compromised with the passage of time. In short, Crank Brothers and

their new counsel have diligently pursued the actual facts regarding Hermansen '885, and have diligently prepared this submission, during the time from about December 19, 2009 (well before the actual state of Hermansen '885 was known to Crank Brothers) to the present, despite being hindered by incorrect USPTO records as to the actual date of expiration, lack of an electronic USPTO file history for Hermansen '885, lack of complete contemporaneous correspondence between Crank Brothers and Tachner, and Crank Brothers' present inability to rely on accurate information from Tachner and his staff.

Based on the corrected record and the new facts showing diligence by Crank Brothers, it is believed that Tachner and his staff's apparent fraudulent and deceptive actions should be eliminated from consideration of the unavoidable delay in seeking reinstatement of Hermansen '885. Therefore, it is respectfully submitted that the relief previously granted in the Second Decision was appropriate and should be reinstated or that relief be granted based on the Petition when taking the corrected facts and elimination of the incorrect facts into account.

SUMMARY

It is respectfully submitted that the delay in the payment of the first maintenance fee for Hermansen '885 has now been demonstrated to have been unavoidable. Specifically, the delay resulted from errors committed by Tachner's staff that were later apparently actively and intentionally concealed from Crank Brothers as well as the USPTO. Also, it has conclusively been shown that:

- (1) the error was the cause of the delay at issue;
- (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

The second maintenance fee, despite being timely paid and accepted, was later apparently refunded to Tachner in connection with the issuance of the unsolicited Third Decision.

In conclusion, all of the foregoing demonstrates that it was the docketing or clerical errors committed by Tachner's staff that resulted in the delay in payment of the first maintenance fee for Hermansen '885. Also, the error was apparently intentionally concealed by Tachner and his staff, which concealment prevented Crank Brothers from having an opportunity to cure the consequences of the error. Finally, had the error not been concealed, it would have been likely that Hermansen '885 would have been reinstated since the error appears to have been committed despite the exercise of due care by Tachner and his staff, such that the error was unexpected and unforeseen and, therefore, was unavoidable.

As shown herein, there was no confusion between Crank Brothers and Tachner. Rather, it was a docketing error or misunderstanding solely on the part of Tachner's staff, likely in the improper docketing and/or file jacket notation "client will pay." Thus, the main reason previously relied upon by the USPTO to deny relief to Crank Brothers was incorrect. The error was indeed unavoidable and completely due to a docketing error, which was undiscoverable until Crank Brothers requested the undersigned to investigate the facts, and was not due to any miscommunication on the part of Crank Brothers.

As demonstrated herein, all of the delay from the time Crank Brothers became aware of the Third Decision until the filing of this Supplemental Petition was unavoidable. Crank Brothers accordingly requests that the Commissioner grant this Supplemental Petition and accept submission of payment for both the first and second maintenance fees for Hermansen '885 so that the patent can be reinstated.

If any additional information would assist a decision on this Petition, please contact the undersigned attorneys for Crank Brothers. The Commissioner is hereby authorized to charge all

fees associated with this Supplemental Petition, including but not limited to the Petition fee, first and second maintenance fees and applicable surcharges to Deposit Account No. 08-1394, Order No. 70614.30.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

Date

Charles E. Van Horn (Reg. No. 40,266)

HAYNES AND BOONE, LLP

Date

Jeffrey A. Wolfson (Reg. No. 42,234)

HAYNES & BOONE LLP
Customer No. 27683
Phone: 202-654-4565
Fax: 214-200-0853

Exhibits A-Y

D-1869591

I hereby certify that this correspondence is being filed with
the United States Patent and Trademark Office via EFS-Web
on the following date.

Date _____

fees associated with this Supplemental Petition, including but not limited to the Petition fee, first and second maintenance fees and applicable surcharges to Deposit Account No. 08-1394, Order No. 70614.30.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

21 July 2010
Date

Charles E. Van Horn
Charles E. Van Horn (Reg. No. 40,266)

HAYNES AND BOONE, LLP

July 21, 2010
Date

Jeffrey A. Wolfson
Jeffrey A. Wolfson (Reg. No. 42,234)

HAYNES & BOONE LLP
Customer No. 27683
Phone: 202-654-4565
Fax: 214-200-0853

Exhibits A-Y
D-1869591

I hereby certify that this correspondence is being filed with
the United States Patent and Trademark Office via EFS-Web
on the following date.

Date July 21, 2010
Justin B. Buford

EXHIBIT LIST

- Exhibit A: Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b), dated October 18, 2007
- Exhibit B: Decision dismissing the Petition, dated April 9, 2008
- Exhibit C: Request for Reconsideration of Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b), dated July 31, 2008
- Exhibit D: Second Decision granting the Petition, dated October 15, 2008
- Exhibit E: Third Decision which vacated the Second Decision and denied Petition, dated November 6, 2008
- Exhibit F: Declaration of Tom Chen, dated July 19, 2010, with Exhibits 1-2
- Exhibit G: E-mail from Winefordner to Tachner, dated March 27, 2008
- Exhibit H: Copy of stamped postcard receipt, dated May 17, 2004
- Exhibit I: Photograph of Tachner file cover for U.S. Patent No. 5,676,529
- Exhibit J: Photograph of Tachner file cover for U.S. Patent No. 6,027,319
- Exhibit K: Photograph of Tachner file cover for U.S. Patent No. 5,857,509
- Exhibit L: Photograph of Tachner file cover for U.S. Patent No. 6,059,245
- Exhibit M: Photograph of Tachner file cover for U.S. Patent No. 6,851,189
- Exhibit N: Photograph of Tachner file cover for U.S. Patent No. 7,225,703
- Exhibit O: Photograph of Tachner file cover for U.S. Patent No. 6,205,885
- Exhibit P: Notice of Patent Expiration, dated April 27, 2005
- Exhibit Q: E-mail from Winefordner to Tachner, dated July 14, 2008
- Exhibit R: Declaration of Carl Winefordner, dated July 19, 2010, with Exhibits 1-3 (Winefordner II Declaration)
- Exhibit S: Transaction history for U.S. Patent No. 5,676,529
- Exhibit T: Transaction history for U.S. Patent No. 5,857,509

EXHIBIT LIST

- Exhibit U: E-mail from Foreman (Tachner's office) to Winefordner, dated October 3, 2007
- Exhibit V: List of Crank Brothers' U.S. and foreign patent matters handled by Tachner, dated October 3, 2007
- Exhibit W: Bibliographic data for U.S. Patent No. 6,205,885
- Exhibit X: E-mail from Crank Brothers' Italian counsel to Winefordner, dated December 15, 2009
- Exhibit Y: E-mail from Chen to McNally, dated January 21, 2010

EXHIBIT A



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,205,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

MAIL STOP: PETITIONS

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

OCT 26 2001

Dear Sir:

PETITION FOR ACCEPTANCE OF DELAYED

PAYMENT OF MAINTENANCE FEES

RULE 1.378(b)

06/04/2001 L01EP1 8015075000
06/04/2001 L01EP1 8015075000
02 FC:1557 15.00 CR 665.00 CR

The Petitioner herein, Leonard Tachner, respectfully requests granting of this petition, namely, a finding that expiration of the above-captioned patent based upon a delay of 24 months and 3 weeks in payment of the maintenance fee, was unavoidable.

06/04/2001 L01EP1 8015075000
06/04/2001 L01EP1 8015075000
02 FC:1557 15.00 CR 665.00 CR

Enclosed herein are the required maintenance fee, the required surcharge and a showing as called for in Rule 1.378(b). The showing under paragraph (3) of 1.378(b) is provided herein in the form of a Declaration of my Office Manager, Janis Foreman.

In Ms. Foreman's Declaration, she explains under oath that the delay in payment resulted from an unfortunate confusion between our office staff and the patentee as to who would pay the maintenance fees for this client. Ms. Foreman believed that she had received instruction from the client that they would pay their own maintenance fees and

06/04/2001 L01EP1 8015075000
06/04/2001 L01EP1 8015075000
02 FC:1557 15.00 CR 665.00 CR

10/15/2000 CXL OK 09080001 660930 6205885
01 FC:2551 465.00 DP
02 FC:1557 15.00 CR 665.00 DP

PETITION FOR ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEE UNDER
RULE 1.378(b)
6,205,885

FILED
OCT 28 2007

notation to that effect on all appropriate docket sheets and on all corresponding file wrapper covers. Ms. Foreman has been my principal staff employee for over 29 years and Office Manager for about 25 years.

On or about October 3, 2007 we learned that the client/patentee had not paid the maintenance fee. We learned that the patentee had apparently forgotten the instruction communicated to Ms. Foreman and instead had assumed that our staff had paid the fee in a timely manner. We immediately set about to determine the cause of the delay in payment and have since determined that the cause was the aforementioned confusion between the instruction from the client and the client's apparent assumption that there was no such communication. We believe that the client's communication came in 2004 shortly after we paid the first maintenance fee on two earlier patents in February of that year and billed the client accordingly. We believe that the client had forgotten that they had given such an instruction to our staff.

The undersigned petitioner has a very active patent prosecution practice which has resulted in the issuance of upwards of least 500 U.S. patents over the past 29 years. We depend to a great extent on docket entries and file wrapper entries in meeting deadlines including if and when to pay maintenance fees. The delay in payment of the maintenance fee in regard to the above-captioned patent was due entirely to confusion between my staff and the client as to who would pay the fee. As soon as we learned of the problem, we started to determine what had occurred and to prepare this petition and attachments. We are submitting this petition 3 weeks beyond the two year limit under Rule 1.378(c) for unintentional delay.

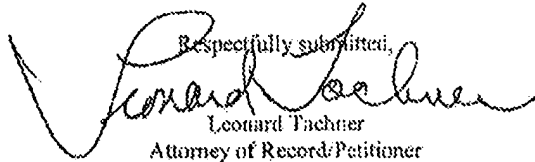
PETITION FOR ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEE UNDER
RULE 1.378(b)
6,205,885

RECEIVED

OCT 26 2007

It is my earnest belief that the confusion and resulting payment delay was unavoidable. Nevertheless, I have instructed Ms. Foreman to rely only on written instruction from a client not to pay a maintenance fee for any reason in the future.

Respectfully submitted,



Leonard Tachner
Attorney of Record/Petitioner
Registration No. 26,344

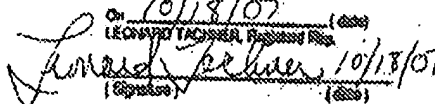
Dated: 10/18/07

(949) 752-8525 telephone
(949) 955-2415 telefax

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to:
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On 10/18/07 (date)
LEONARD TACHNER, Registered Rep.



(Signature) (date)



10-19-07

DAC/BOX

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))

Docket Number (Optional)

SLIP-21

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

RECEIVED

OCT 25 2007

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3262.

Patent No. 6,205,883 Application Number 09/391,709

Issue Date March 27, 2001 Filing Date September 8, 1999

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____
original application number _____
original filing date _____

Adjustment date: 10/10/2006 GARIAS
10/22/2007 EYALEWI 00000040 6205883
01 FC:1599

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____ filed on _____ -1158.00 EP

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is (1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

10/22/2007 EYALEWI 00000040 6205883

01 FC:1599

1158.00 EP

LEONARD TACHNER

Typed or printed name of person signing Certificate
10/22/2007 EYALEWI 00000040 6205883
01 FC:1599

1158.00 EP

(Page 1 of 1)

The collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (are by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 172 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEE OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-5109 and select option 2.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 1/2 yr fee	(1551)	<input checked="" type="checkbox"/> \$ <u>450</u>	3 1/2 yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 450

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 1,150

☐ Please charge Deposit Account No. _____ the sum of \$ _____. A duplicate copy of this authorization is attached.

☐ Payment by credit card. Form PTO-2039 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 06-0933. A duplicate copy of this authorization is attached.

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made please

☐ Credit to Deposit Account No. 05-0930

OR

☐ Send refund check.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED


Signature(s) of Petitioner(s)

10/18/07
Date

LEONARD TACHNER

25,344

Typed or printed name(s)

Registration Number, if applicable

17961 SKY PARK CIRCLE, SUITE 38-E

949-752-8525

Address

Telephone Number

IRVINE, CALIFORNIA 92614

Address

ENCLOSURES:

- ☒ Maintenance Fee payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☐ Other:

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."


Signature

10/13/07
Date

LEONARD TACHNER

Typed or printed name

26,344

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

RECEIVED

OCT 26 2007

(Please attach additional sheets if additional space is needed)



UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,205,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

MAIL STOP: PETITIONS

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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OCT 26 2007

Dear Sir:

DECLARATION OF JANIS FOREMAN

I, Janis Foreman, declare as follows:

1. I am the Office Manager for Leonard Tachner, A Professional Law Corporation (the "Firm"). I began employment with the Firm over 29 years ago. My employment with the Firm has been continuous in the capacity of Office Manager for at least 25 years.

2. Along with Jodie Miller ("Miller"), secretary and docket clerk for the Firm, I manage the docket system for the Firm and frequently review docketing entries and due dates with Leonard Tachner ("Tachner"). The docket system tracks payment due dates for maintenance fees and for all other deadlines with the USPTO. The procedure for responding to a docket entry regarding a maintenance fee payment includes: 1) sending a letter to the client to explain the fee and deadline; and (2) paying the maintenance fee usually after receiving authorization, written or oral, from the client.

DECLARATION OF JANIS FOREMAN

3. Around March 2001, when the Firm received the above-captioned issued patent, I supervised Miller to assure that entries were made in the docket system for September 27, 2004 (3.5 yr annuity), September 27, 2008 (7.5 yr annuity) and September 27, 2012 (11.5 yr annuity) deadlines for payment of the maintenance fees, and to send a letter to the client explaining the requirement for paying the maintenance fees.

4. However, before the first annuity became due (September 27, 2004) I entered a statement on the face of the file that the client would pay the annuities (see photocopy of docket sheet attached as Exhibit A). Also attached are photocopies of docket sheets showing some of this client's other patent annuities wherein it is noted on the docket sheet that the client will pay their own annuities (attached hereto as Exhibits B1-B3). As shown in attached Exhibit C which is a photocopy of the face of our Docket No. SLIP-21, it is noted the client will pay the maintenance fee. All of the issued patent file faces for this client show that the client will pay their own annuities as of mid-2004 (see sample photocopies attached as Exhibits D1-D6). I recall doing so based on a discussion with the client indicating that they would pay their own annuities. It is not unusual for a client to express the desire to pay their own maintenance fees in order to avoid having to pay the firm the additional service fee we charge for doing so. For example, attached hereto is Exhibit E which is a photocopy of the face cover of Docket No. MATHENY-1 wherein the face of the file shows an entry indicating that the client has instructed us that they will pay their own maintenance fees. The same is true for Exhibit F for our Docket No. VLAD-1 (photocopy attached).

5. On October 3, 2007, the client inquired about annuity payments and specifically, if the annuity for this patent had been paid. I informed them that I had not paid the maintenance fee since I was under the impression that they had wanted to pay the maintenance fee themselves.

6. The client stated that they did not remember giving me the instruction that "they would pay their own maintenance fees". The client stated how important this patent is to their company and requested that we immediately begin a process to reinstate their patent.

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OCT 26 2007

DECLARATION OF JANIS FOREMAN

7. Because there appears to have been confusion between the client and myself regarding who would pay the maintenance fees and because neither the client nor I could find any written document providing instructions to pay or not to pay the maintenance fee, I believe the non-payment of this maintenance fee was unavoidable.

8. Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declarations made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the present patent.

Janis Foreman
Declarant's Signature

10/18/07
Date

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to:

MAIL STOP Patent
COMMISSIONER FOR PATENTS
U.S. PATENT AND TRADEMARK OFFICE
P.O. Box 1450
Alexandria, Virginia 22313-1450

On 10/18/07 (date)
LEONARD TACHER, Registered Mail

Leonard Tacher 10/18/07
(Signature) (date)

Spokane, 20 Oct

Schubert

742

Exhibit 1

[illegible]

Exhibit B,

Page 1 of 3

DATE: April 20 05

BUCKET NO.	TYPE OF ACTION	DUE DATE	ACTION TAKEN IN RESPONSE	RESPONSE DATE
Pic 100 30/4/05	O.A. Due	4-5-05	See J.F. - 7-5-05	
Engine-6	Resp. to 2 nd (final) O.A.	4-6-05	Ame	1-20-05
Fisher-B	2 nd Annuit. try	4-7-05	See 10-7-05	10/11/05
sock-2	Resp. to 3 rd (final) O.A.	4-7-05	See 7-7-05	10/11/05
Hypo-2/PCT	CH II: Due	4-8-05	Chp. II due 3-8-06	3/8/06
Salido-1 (for primary)	Req. to 1 st O.A.	4-11-05	See J.F. (7-11-05)	
Argentin-1	Full Application for Taiwan	4-12-05	Handled by another client/Attorney	
Argentin-2	Full Application for Taiwan	4-13-05	Filed full app, PCT & Taiwan on 4-13-05	4-3-05
Tay-1	Section 8 & 15 Affs.	4-13-05	See J.F. / No Resp from client	
QTech-2	Resp. to 1 st O.A.	4-13-05	Ame	3-18-05
Slip-2	2 nd Annuit. try	4-14-05	Client will pay	
Salido-1 (for final)	Annuit. try Due	4-14-05	See 10-14-05	10/11/05

Exhibit B₂

MONTH July 20 06 Page 2

ROCKET NO.	TYPE OF ACTION	DUE DATE	ACTION TAKEN IN RESPONSE	RESPONSE DATE
Sheila-19	Resp to 1 st O.A.	7-7-06	Ans.	6-14-06
Meryl-1/cip-3	Resp to 2 nd O.A.	7-7-06	No response	
100,340/raiser	Annuity	7-10-06	Ass. paid	
ASM-141	3 rd maint. fee	7-10-06	No longer our client	
ASM-140C	3 rd maint fee	7-10-06	No longer our client	
GUOO-2/3/per/raiser	Annuity	7-11-06	No longer our client	
GUOO-2/3/per/raiser	Exam Due	7-11-06	No longer our client	
Slip-3	2 nd Annuity	7-12-06	Client will pay	
XR-1	Resp. to O.A.	7-12-06	Sent	3-14-06
605/raiser/per/raiser	Exam Due	7-13-06	Assoc. Requested	
605/raiser/per/raiser	Annuity	7-13-06	Assoc. paid	
Scuba-6/c	3 rd Annuity	7-17-06	No longer our client	

Exhibit B3

Page 3

MONTH August 20 07

DOCKET NO.	TYPE OF ACTION	DUE DATE	ACTION TAKEN IN RESPONSE	RESPONSE DATE
100.255/canada	Annuity	8-20-07	Assoc. paid	
100.256/epo	Annuity	8-20-07	Assoc. paid	
100.257/canada	Annuity	8-20-07	Assoc. paid	
100.253/china	Annuity	8-20-07	Assoc. paid	
100.261/epo	Annuity	8-20-07	Assoc. paid	
100.251/epo	Annuity	8-20-07	Assoc. paid	
100.247/epo	Annuity	8-20-07	Assoc. paid	
100.254/china	Annuity	8-20-07	Assoc. paid	
100.249/china	Annuity	8-20-07	Assoc. paid	
100.248/canada	Annuity	8-20-07	Assoc. paid	
100.265/canada	Annuity	8-20-07	Assoc. paid	
Slip-2/cip	2 nd Annuity	8-22-07	Client will pay	

Exhibit C

ISSUED

INVENTOR Frank Hermansen and Carl Winifordner
SERIAL NO. 09/341,709 FILED 9-8-99
TITLE Clipseless Bicycle Pedal

ASSIGNEE

ASSIGNMENT RECORDED _____ FEE _____ FNAME _____

OFFICE ACTIONS	AMENDMENTS
9-27-04 First Annuity	Check to pay annuities
9-27-08 Second Annuity	
9-27-12 Third Annuity	

RECEIVED

OCT 26 2007

ENTERED OFFICE

ALLOWED _____ FINAL FEE PAID _____
PATENT NO. US 6,205,885 B1 DATE March 27, 2001

© Krupsman
10100 Shuman Avenue, Long Island City, NY 11101 (718) 337-0000 (800) 337-1234
fax: (718) 337-1234

ISSUED

CLIENT'S TITLE SLIP-21
DIVISION OF
CONFIRMATION IN PART OF
INVENTOR Hermansen, Frank et al
OTHER FOREIGN SERIAL NO. 09/341,709

EXHIBIT D

LAW OFFICES OF LEONARD TACHNER
REGISTERED PATENT ATTORNEY
3980 WESTERLY PLACE
SUITE 295
NEWPORT BEACH, CALIFORNIA 92660
(714) 752-9525

ISSUED

INVENTOR FRANK HAMANSEN AND CARL WINEFORDNER
SERIAL NO. 08/680,749 FILED 7-15-96
TITLE COMPACT MINIMAL AIR PUMP HAVING SELECTABLE
HIGH VOLUME AND HIGH PRESSURE MODES

ASSIGNMENT RECORDED _____ REEL _____ FRAME _____

OFFICE ACTIONS	AMENDMENTS
12-12-97 Repts. to O.A.	12-12-96 a.m.e.
5-5-97 Issue Fees + Drawings	5-5-97 drawings
4-14-2001 First Annunity	10-15-2001 pt. amended
4-11-2005 Second Annunity	client will pay
4-11-2009 Third Annunity	

2nd Annunity
Pd w/ Petition
10-3-07

OFFICE OF PATENT & TRADEMARKS
OCT 26 2007

ALLOWED _____ FINAL FEE PAID _____
PATENT NO. 5,676,529 DATE October 14, 1997
5,676,529

ISSUED

CLASSIFICATION

CLIENT'S TITLE

INVENTOR

INVENTOR

OTHER FOREIGN

SERIAL NO.

08/680,749

Exhibit D3

LAW OFFICES OF LEONARD TACHNER

REGISTERED PATENT ATTORNEY

3090 WESTERLY PLACE

SUITE 255

NEWPORT BEACH, CALIFORNIA 92660

(714) 752-8525

ISSUED

INVENTOR CARL WINE FRADNER and Frank H. Amerson

SERIAL NO. 08/718,766 FILED 9-25-96

TITLE Improved Bicycle Tire Lever

ASSIGNEE

ASSIGNMENT RECORDED _____ FILED _____ FRAME _____

OFFICE ACTIONS	AMENDMENTS
12-24-97 Resp. to First O.A.	11-5-97 Am.
3-24-98 Resp. to Second (Am.) O.A.	2-20-98 file FWC
10-14-98 Issue Res + Formal Drawg	10-14-98 pd a drawg
7-12-2002 First Annuity	7-12-02 pd
7-12-2006 Second Annuity	client pays
7-12-2010 Third Annuity	

2nd Annuity
pd w/ petition
10-3-07

ALLOWED

PATENT NO. 5, DATE January 12, 1999

ISSUED

CLIENT & TITLE
DIVISION OF
COMPARISON IN 2007
INVENTOR
OTHER FOREIGN
SERIAL NO. 08/718,766

Issued

Exhibit D4

Issued

CLIENT - TITLE
09/100,361

CONTRIBUTION BY PART OF
09/100,361 5-14-98

INVENTOR
FRANK HERMANSEN and CARL WINE FORDNER

SERIAL NO.
09/100,361

FILED
6-19-98

TITLE
LOCKING WATER BOTTLE CASE
FOR BICYCLES

ASSIGNEE

ASSIGNMENT RECORDED
REEL
FRAM

OFFICE ACTIONS	AMENDMENTS
10-20-99 Resp. to First O.A.	9-3-99 answer
12-13-99 Issue First Formal Demand	12-13-99 pd. huge + Chapple
11-9-03 First Annunity	2-23-04 pd. up/ans
11-9-07 Second Annunity	client pays
11-9-11 Third Annunity	

ALLOWED
PATENT NO. 6,059,245

FINAL PER PAID
DATE May 9, 2000

Issued

SLIP-5/10/00
FRANK HERMANSEN and CARL WINE FORDNER
09/100,361

Exhibit D5

Issued

INVENTOR Frank Khannissen and Carl Winckler

SERIAL NO. 10/375,243 FILED 2-27-03

TITLE Method of Fabricating a Clipless Bicycle Pedal

ASSIGNEE

ASSIGNMENT RECORDED _____ INDEX _____ FRAME _____

OFFICE ACTIONS	AMENDMENTS
2-27-04 PCT and Taiwan	2-26-04 done
7-24-04 Restriction Election	7-26-04 done
12-30-04 Issue Re. S. Dec	12-30-04 pd
8-8-08 1 st Annuity	Client to pay annuities
8-8-12 2 nd Annuity	
8-8-16 3 rd Annuity	

ALLOWED US 6,851,189 B2 FEE PAID February 8, 2005

PATENT NO.

DATE

Issued

CLIENT & FILE
DIVISION OF
CORPORATION IN PART OF
SLIP-6
INVENTOR
CANDID
SERIAL NO. 10/375,243
ORIGIN FORER

Isved

ASSIGNMENT RECORDED September 9, 2006 REG. 018234 FRAME 000

OFFICE ACTIONS	AMENDMENTS
3-16-05 Pt To Taiwan due	Filed 3-16-05
10-11-06 Rep to P.O.A	10-23-06 acc.
12-14-06 Rep to 2nd Fin. Co	
4-16-07 Life Fees Due	4-16-07 pd
12-5-10 First Annuity	Client pays annuities
12-5-11 Second Annuity	
12-5-13 Third Annuity	

ALLOWED FINAL FEE PAID
PATENT NO. US 7,245,703 B2 DATE June 5, 2007

[illegible]

Issued

02/07/75

10/802, 105
SERIAL NO.

FRIGHTS BOOK

ASSIGNMENT RECORDED.....REEL.....FRAME.....

CLIENT'S TITLE
COMPANY OF
FOOTWEAR IN PARIS OF

INVENTO
CASA DE LA

SEAL: NO.

DISPATCH CONTROL

ALLOWED _____ FRIAL FEE PAID _____
PATENT NO. 6,535,121 DATE 3-18-2003

ISSUED

CLIENT OR TITLE	PROVISIONAL	INVENTOR	SEANSPY, JAMES R. KADIMIR	SERIAL NO.	01/14/12
DATE	6/27/88	336	5-9-00		
OTHER PERSONS					

OFFICE ACTIONS	AMENDMENTS
9-20-01 Resp to Fict O.A.	8-20-01 Amc
1-28-02 Issue Res thewledge	1-28-02 2d Amcgs not needed
1-9-06 First Annuity	client pays
1-9-10 Second Annuity	
1-9-14 Third Annuity	

ALLOWED _____ FINAL FEE PAID _____
PATENT NO. US 6,417,852 B2 DATE July 9, 2002

Kryssman
C. J. Kryssman, Jr., President
Kryssman & Associates, Inc.

ISSUED

EXHIBIT B



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEONARD TACHNER, A PROFESSIONAL LAW
CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE CA 92614

COPY MAILED

APR 09 2008

OFFICE OF PETITIONS

In re Patent of Hermansen et al. :
Patent No. 6,205,885 :
Issue Date: March 27, 2001 :
Application No. 09/391,709 :
Filing Date: September 8, 1999 :
Attorney Docket No. SLIP-21 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.378(b), filed October 18, 2007, to reinstate the above-identified patent.

The petition is **DISMISSED**.

Facts:

The instant patent issued March 27, 2001.

The last day the maintenance fee could have been timely paid, with a surcharge, was Monday, March 28, 2005. The maintenance fee was not timely paid and the patent expired at midnight on March 28, 2005.

The law firm who handled prosecution of the patent, as well as several of petitioner's other patents, had paid maintenance fees for two of petitioner's patents during February of 2004. When the law firm pays a maintenance fee on behalf of a client, the law firm charges the client a service fee. The declaration of Janis Foreman indicates it is not unusual for a client to request to pay their own fees in order to avoid payment of the service fee.

Ms. Foreman believes she received instructions from the client on a date around mid-2004 stating the client would pay maintenance fees in the future. Ms. Foreman states, "All of the issued patent files for this client show that the client will pay their own annuities as of mid-2004."

The 3.5 year maintenance fee for the instant patent could have been paid, without a surcharge, as early as March 27, 2004, and as late as Monday, September 27, 2004. The law firm's docket sheet for the instant patent stated the due date for the first maintenance fee was September 27, 2004. The corresponding "Action Taken in Response" column stated, "Client said they will pay."

Patent No. 6,851,189 issued February 8, 2005. A copy of the front of the file includes an entry stating the issue paid was paid December 30, 2004. A following entry indicates "client to pay annuities."

Patent No. 7,225,703 issued June 5, 2007. A copy of the front of the file includes an entry stating the issue fee was paid April 16, 2007. A following entry indicates "client pays annuities."

Petitioner does not remember informing Ms. Foreman that Petitioner would handle payment of maintenance fees in the future.

On or about October 3, 2007, the law firm learned from petitioner that petitioner had not paid the maintenance fee.

The instant petition was filed October 18, 2007.

The Law:

A grantable petition under 37 CFR 1.378(b) must be accompanied by a showing to the satisfaction of the Director that the entire delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable.

In order for a party to prove unavoidable delay, the Office requires the party demonstrate the party exercised the "care or diligence that[i] is generally used and observed by prudent and careful men in relation to their most important business."¹ However, "the question of whether [delay] was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."²

The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

The Office and Congress have recognized the unavoidable standard can be very difficult to meet. During 1992, Congress considered the difficulty involved in reinstating a patent under the unavoidable. Congressional representatives described the unavoidable standard as inflexible, extremely hard to meet, too stringent and harsh.³ Congress did NOT take steps to make the

¹ *In re Mattheis*, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). See also *Bax. v. Lehman*, 35 F.3d 606, 34 U.S.P.Q.2d (BNA) 1786 (Fed. Cir. 1993) (citations omitted) ("[I]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.")

² *Smith v. Moschinski*, 671 F.2d 532, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982).

³ "[T]he unavoidable standard has been found to be extremely hard to meet. Some patent owners have lost their patent rights due to this inflexible standard." 118 CONG. REC. S16613, 16614 (September 30, 1992) (Rep. DeConcini) (emphasis added). "The unavoidable standard has proved to be too stringent in many cases." 118 CONG. REC. H1115 (October 3, 1992) (Rep. Hughes) (emphasis added). "The unavoidable standard is too stringent. Some patent owners have lost their patent rights due to

unavoidable standard more flexible, easier to meet, less stringent, or less harsh. Instead, Congress determined that it would allow patent owners the ability to reinstate a patent under an "unintentional" standard as long as the petition was filed within 24 months of the expiration of the patent. Congress chose to continue requiring proof of unavoidable delay for petitions filed after the 24 month time period.

Application of the Law to the Facts:

Based on the facts in the record, it appears the most likely explanation for petitioner's failure to pay the fee is:

- (1) Petitioner informed the law firm petitioner would pay maintenance fees in the future,
- (2) Petitioner failed to take steps to ensure the fees would be timely paid, and
- (3) Petitioner failed to pay the fees.

An entity treating the patent the same as a reasonable and prudent person would treat his or her most important business would not absolve the law firm of responsibility for monitoring maintenance fees without taking reasonable and reliable steps to ensure maintenance fees for the patents in the future. The petition fails to list any steps taken by petitioner to ensure the fee would be paid timely.

Petitioner must prove the entire delay was unavoidable. When the law firm paid the maintenance fees for two patents during February 2004, did the law firm send petitioner a bill? If yes, and if petitioner was relying on the law firm, why did petitioner fail to inquire into the reason it was not receiving future bills for maintenance fees during the following period of over three years.

The petition states the law firm learned petitioner had not paid the fee during October 2007. However, the petition fails to discuss the date petitioner learned the maintenance fee had not been paid. When did petitioner first learn that the maintenance fee for the instant patent, or any of its other patents, had not been timely paid?

Any request for reconsideration should be accompanied by a statement by an employee or officer of petitioner with first hand knowledge of the relevant facts concerning petitioner's actions and inactions with respect to petitioner's patents and the maintenance fees for each patent.

Even if petitioner could prove it never informed the law firm it would pay the fees, and prove it was reasonable in relying on the law firm to pay maintenance fees, such a showing would not necessarily demonstrate unavoidable delay. Reasonable reliance on a third party representative does not, per se, constitute "unavoidable" delay. When a party relies on an agent to take certain steps, the petition must address not only the party's actions *but also* address the agent's actions or inactions.⁴ A showing is insufficient if it merely establishes that petitioner did everything

circumstances that do not warrant this harsh result, but that could not be considered 'unavoidable' under current law." 138 CONG. REC. E1688 (June 4, 1992) (extension of remarks of Rep. McCollum) (emphasis added).

⁴ See *Priorsec, Inc. v. Secor, Cu. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 396, 397 (1993) ("The [Circuit] court also appeared to focus its analysis on whether respondents did all they reasonably could in policing the conduct of their attorney, rather than on whether their attorney, as respondents' agent, did all he reasonably could to comply with the court-order bar date.

petitioner could to monitor the agent's actions and inactions, but fails to address the agent's conduct.⁵

Even if a petitioner ensures his agent is an attorney rather than, for example, an individual with little knowledge of the law, petitioner will still be bound by the agent's conduct. The Tenth Circuit has stated, "Plaintiff argues against the harshness of penalizing him for his attorney's conduct. But there is nothing novel here (footnote omitted). Those who set through agents are customarily bound by their agents' mistakes. It is no different when the agent is an attorney."⁶

The Tenth Circuit is not alone in holding parties bound by the actions of their agents. The Supreme Court has stated, with emphasis added,

Petitioner voluntarily chose his attorney as his *representative* in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected *agent* ... Each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'⁷

The effects of holding petitioner bound by petitioner's agent's conduct may seem harsh. However, as footnote 10 which follows the above quotation explains,

Clients have been held to be bound by their counsels' inaction in cases ... when the consequences have been more serious. (Citations omitted). Surely if a criminal defendant may be convicted because he did not have the presence of mind to repudiate his attorney's conduct in the course of the trial, a civil plaintiff may be deprived of his claim if he failed to see to it that his lawyer acted with dispatch in the prosecution of his lawsuit.

Petitioner has not shown that the law firm's actions were reasonable even if petitioner never informed the law firm petitioner would pay the fees. If petitioner never informed the law firm that petition would pay the fees, then Ms. Foreman's conduct does not appear to have been reasonable. Ms. Foreman did not simply make a typographical or minor clerical error. Instead, near mid-2004, she intentionally changed most, if not all of petitioner's files, to indicate petitioner would be paying the fee.

⁵ In this, the court erred. . . . [I]n determining whether respondents' failure to file their proof of claim prior to the bar date was excusable, the proper focus is upon whether the neglect of respondents *and their counsel* was excusable." (emphasis in original). In *Hugson v. Laddner*, 973 F.2d 1564, 1567, 23 U.S.P.Q.2D (BNA) 1910 (Fed. Cir. 1992), the court determined the client was bound by the attorney's actions. The majority was unpersuaded by the dissent which states in part that the "errors occurred despite exceptional vigilance by the client."

⁶ See *Id.*

⁷ *Gilpin v. City of Enid, Oklahoma*, 312 F.2d 1164, 1169 (10th Cir. 1963).

⁸ *Link v. Washburn Railroad Co.*, 170 U.S. 626, 633-634, 8 L. Ed. 2d 714, 82 S. Ct. 1386 (1962) (quoting *Smith v. Arst*, 101 U.S. 320, 326 (1880)).

The Office notes Ms. Foreman has stated, "All of the issued patent files for this client show that the client will pay their own annuities as of mid-2004." However, the front of the files for Patent No. 6,851,189, and Patent No. 7,225,703, render the comment ambiguous. The front of each file appears to indicate the "client to pay" entries were made after mid-2004. For Patent No. 6,851,189, the entry indicating "client to pay annuities" follows the entry indicating the issue fee was paid December 30, 2004. For Patent No. 7,225,703, the entry indicating "client pays annuities" follows the entry indicating the issue fee was paid April 16, 2007. If Ms. Foreman made an error, it appears she made the same error on multiple occasions. Any request for reconsideration should be accompanied by a full discussion of each occasion Ms. Foreman changed any of petitioner's files to indicate petitioner would pay the fee.

Petitioner bears the burden of proof. A review of the petition indicates the showing of record is insufficient to prove the entire delay was unavoidable within the meaning of 37 CFR 1.378(b). Therefore, the petition must be dismissed.

Petitioner's current options

I. Petitioner may file a request for reconsideration.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.378(b)." This is not final agency action within the meaning of 5 U.S.C. § 704.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable, petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Since the petition is dismissed, petitioner may request a refund of the maintenance fee and surcharge. Petitioner is reminded that if a request for reconsideration is later filed along with the \$400 fee, the \$400 will not be refunded. A request for a refund should be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany any request for refund.

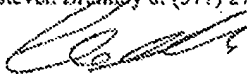
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney
Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

EXHIBIT C



3-4-8

DAC

#9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,208,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

MAIL STOP: PETITIONS

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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AUG 12 2008

OFFICE OF PETITIONS

Dear Sir:

**REQUEST FOR RECONSIDERATION OF PETITION FOR ACCEPTANCE
OF DELAYED PAYMENT OF MAINTENANCE FEE UNDER
RULE 1.378(b)**

Petitioner hereby respectfully requests reconsideration of the April 9, 2008 Dismissal of its October 18, 2007 Petition. Enclosed herewith by way of additional evidence are declarations of Carl Winefordner and Frank Hermansen, co-inventors of the subject patent and principals of the patent owner, California Crank Brothers, and of their patent attorney, the undersigned, Leonard Tachner.

The Declarations of Messrs. Winefordner and Hermansen provide evidence that it was an apparent misunderstanding as to who would pay the maintenance fees for the subject patent and that they did not instruct Ms. Foreman, Mr. Tachner's office manager to not pay the maintenance fees. Mr. Winefordner also described how important is the subject patent and that it had been the normal course of having Mr. Tachner's firm pay the maintenance fees for other patents and that this patent was not an exception to that normal course. They indicate that they are 100% sure and without any doubt that they instructed Ms. Foreman to pay the maintenance fees on the '885 patent.

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REQUEST FOR RECONSIDERATION OF PETITION FOR ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEE UNDER RULE 1.378(b)

Leonard Tachner's Declaration describes the relevant events surrounding the delayed payment of the maintenance fee and the fact that Ms. Foreman made a profound clerical error based on her misunderstanding of the instructions from the client. He also explains that the misunderstanding stems primarily from Ms. Foreman's distraction, or confusion or unusual lack of dependable adherence to a client's instructions. He explains that after decades of her usual dependability and care in carrying out his and his client's instructions, he had reasonably come to expect accurate and true performance of her duties. Mr. Tachner also states that the misunderstanding of the client's instructions and resulting clerical error could be due in part to or exacerbated by the fact that this patent was based on an application prepared, filed and prosecuted by the client and not by Tachner's office and that this particular client had often done at least some of its own patent application preparation in order to reduce attorneys' fees before it attained its current success.

Based upon this new evidence, Mr. Tachner expresses his belief that the misunderstanding of the client's instructions by Ms. Foreman resulted in an erroneous docket entry (i.e., client to pay annuities) which was subsequently relied upon in the due course of Tachner's standard office process and that this resulted in the unavoidable delay of the maintenance fee payment. For all of the above-noted reasons, Petitioner earnestly solicits reconsideration of the dismissal and granting of the Petition to accept the delayed payment. Enclosed herewith is a check for the fee appropriate for such reconsideration per Patent Office rules.

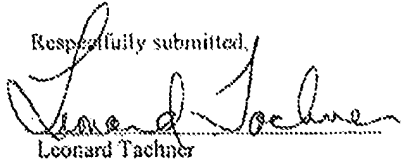
The undersigned has found this episode to be an extremely stressful and frightening experience. First and foremost because a long term, valued client, is in danger of losing a very valuable patent because of a simple human misunderstanding that resulted in a clerical error of profound significance. Second, because if this request for reconsideration of the petition is found lacking, I am personally at risk for a staggering liability which would likely terminate a 36-year

REQUEST FOR RECONSIDERATION OF PETITION FOR ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEE UNDER RULE 1.378(b)

career as a patent professional and negatively affect the rest of my life. Therefore, I respectfully
request that any doubt that there may be as to the unavoidability of the delay in payment, be
looked upon in the light most favorable to the granting of the petition.

Dated: July 30, 2008

Respectfully submitted,



Leonard Tachner
Attorney of The Petitioner
Registration No. 26,344

(949) 752-8525 telephone
(949) 955-2415 telefax



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,205,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

MAIL STOP: PETITIONS

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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AUG 12 2008

OFFICE OF PETITIONS

Dear Sir:

**DECLARATION OF LEONARD TACHNER IN SUPPORT OF REQUEST FOR
RE-CONSIDERATION OF PETITION FOR ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEE UNDER
RULE 1.378(b)**

1. I am a registered patent attorney having registration No. 26,344. I was admitted as a patent agent in 1972 and as a patent attorney in 1974. I was admitted to the State Bar of California in 1973 and have remained in good standing since then. I have maintained a small law firm IP practice since 1978. Today I have a sole practice in Irvine, California. I have two secretaries working for me, Janis Foreman and Jodie Miller. Ms. Foreman is also my office manager and has been an employee of mine since the summer of 1978.

2. Over a period of almost thirty years I personally trained Ms. Foreman to carry out numerous duties in my practice. Included among these duties is that of being responsible for the timely payment of maintenance fees for our clients' issued U.S. patents. I have also instructed her in communicating with clients in a timely manner to learn whether they wish to have us pay maintenance fees for them so that we can anticipate being reimbursed for that payment and being paid a reasonable service fee. Over that period of time that I have come to rely on Ms. Foreman

DECLARATION OF LEONARD TACHNER Continued
Patent No. 6,205,885

to properly carry out these duties, she has paid hundreds of maintenance fees to the U.S. Patent and Trademark Office. I've also come to rely on Ms. Foreman to pay issue fees for allowed patent applications and to communicate with our clients and foreign associates in regard to payment of foreign patent annuities. In order to conduct a successful and efficient practice it had become necessary for me to expect that Ms. Foreman would continue to carry out my instructions in a reliable and accurate manner that was consistent with the wishes of our clients, as she had done for so many years.

3. My firm represents a company named California Crank Brothers (the Petitioner herein), and its two owners, Carl Winefordner and Frank Hermansen who are the inventors named in U.S. Patent No. 6,205,885 which issued on March 27, 2001. The corresponding application was filed by the inventors themselves on September 8, 1999 under Serial No. 09/391,709. I was not an attorney of record in regard to that application, which was prosecuted by the inventors in pro per. It has been common for Messrs. Winefordner and Hermansen to do much of their own work in regard to patent applications in order to reduce attorney fees. I have been happy to assist them to the extent they wished, even though my relationship with them has been somewhat unusual for my practice. In the vast majority of my client relationships, I prepare, file and prosecute patent applications from an informal written or oral disclosure of an invention, consulting occasionally with the inventor as necessary.

4. In October 2007 I learned that some of the Winefordner and Hermansen issued patents, including the 6,205,885 patent had lapsed for non-payment of maintenance fees. Ms. Foreman informed me that she had been instructed by Winefordner and Hermansen that they would be paying their own maintenance fees to avoid our service fees for making those payments. I checked with the client in that regard and was told that they were sure that they had not given her such an instruction. At the time, I was not sure whom to believe since it seemed to me that avoiding service fees would be consistent with the client's prior attempts to minimize their expenses in regard to IP. Moreover, Ms. Foreman had been a trustworthy office manager

DECLARATION OF LEONARD TACHNER Continued
Patent No. 6,205,885

for over twenty years and I had no reason to question her belief that we were no longer responsible for paying maintenance fees for Winefordner and Hermansen. However, in light of the apparent inconsistency between Ms. Foreman and the client in regard to such responsibility, I assumed that there may have been a misunderstanding and on that basis I began working on a petition for delayed acceptance of the maintenance fee for the '885 patent, which petition was filed October 18, 2007.

5. In retrospect, it seemed strange to me that neither we nor the client received a maintenance fee reminder for '885 patent. Ms. Foreman assured me that we had not received such document and the client also has informed me that they had not received such document. Moreover, on July 11, 2008 I learned that the Petitions Office had mailed a written decision (a dismissal) to my office on April 9, 2008. I received a facsimile copy of the decision on July 14, 2008 and read it for the first time on that day. I had not had any knowledge of the content of that decision until July 14, 2008 and I had no knowledge of it being rendered and mailed by the Petitions Office on April 9, 2008 until I checked PAIR for '885 patent on Friday July 11, 2008. Ms. Foreman maintained that the April 9 decision letter was not received by our office until we received the fax copy of July 14, 2008. Attached hereto as Exhibit A is our computer docket sheet for the period April 30, 2008 to June 13, 2008 showing no entry was made for the June 9, 2008 deadline for seeking reconsideration of the April 9, 2008 decision.

6. Because I did not file or prosecute the '885 patent, we have no file history for it. Apparently, Messrs. Winefordner and Hermansen still have the prosecution documents for the '885 patent. We have made a substitute file in which there is only a copy of the issued patent and a copy of our October 2007 petition. Any and all documents that might have been received by our office from the USPTO in regard to the '885 patent should be contained in that file, but there are none.

DECLARATION OF LEONARD TACHNER Continued
Patent No. 6,205,885

7. Ms. Foreman has been a hard-working, dedicated and loyal employee of my firm for decades. I've not previously had reason to doubt her word or question her actions. Ms. Foreman has through many years of her service to the firm and in her relation with clients over that period, convinced me that she could be relied upon to communicate unambiguously with clients and to follow instructions from me and from clients in regard to what to pay or not pay to the Patent Office in behalf of clients. While I did not learn until October 2007 that Ms. Foreman had not paid the maintenance fee for the '885 patent, if she had informed me in 2004 that she had been instructed by the client that they would henceforth pay their own maintenance fees, I would have had no reason to question that instruction because after so many years I had come to rely on her for an accurate and true indication of her communications with my clients.

8. I believe that because Ms. Foreman either did not unambiguously understand the client's instruction or was distracted or confused, or was not functioning in her usually dependable way, the delayed payment of maintenance fees for the '885 patent was unavoidable. I believe that she may have been confused by the fact that the client handled this application without involving our firm in the prosecution or issuance. It was unavoidable because Ms. Foreman was convinced that she had received instructions from the client before the due date of the first maintenance fee that they would subsequently pay their own maintenance fees. It was unavoidable because I was never told that we had received a reminder of maintenance fee due. It was unavoidable because I had come to completely depend and rely on Ms. Foreman and the accuracy of her actions after so many years of reliable and dependable performance.

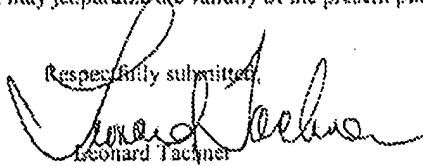
9. I am taking action immediately to reduce Ms. Foreman's duties in the office by taking on some of those obligations myself, by shifting some of Ms. Foreman's duties to our second secretary and by arranging to hire at least one additional staff employee to help. I have also instructed her to always confirm, in writing if possible, that a client does not want us to pay a maintenance fee, even if that is her prior understanding.

DECLARATION OF LEONARD TACHNER Continued
Patent No. 6,205,885

10. I earnestly believe that Ms. Foreman misunderstood the instructions of our client Crank Brothers in regard to who would be responsible to pay their future maintenance fees and particularly the maintenance fees for U.S. Patent No. 6, 205,885. I believe further that this misunderstanding led to a clerical error in our docketing system in the form of an erroneous 2004 entry that the client would pay the maintenance fees for this patent and others of this client in the future. I also believe that because I depend so completely on the reliability of Ms. Foreman in carrying out the instructions of our clients and we depend so completely on our docketing system, that once this erroneous entry was made by Ms. Foreman pursuant to her apparent misunderstanding, our failure to pay the maintenance fee in a timely manner was unavoidable. It was only in October 2007 after we were contacted by Carl Winefordner in regard to the status of the '885 patent, that I realized that there was a problem that had to be remedied as soon as possible.

11. Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declarations made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the present patent.

Respectfully submitted,



Leonard Tachner
Attorney for Petitioner
Registration No. 26,344

Dated: July 30, 2008

(949) 752-8525 telephone
(949) 955-2415 telefax

WATER-35/TAIWAN Annuities 4-30-2008
 100.335/TAIWAN Annuity Due 4-30-08
 006/USA (5,572,228) Issued Patent/Wave Band 3rd Annuity Due (11.5 yrs.) 5-5-08
 JULE-1 TM Renewal Due 5-5-2008
 RIFFE-3 Appeal Brief Due 5-5-08
 100.227/EPO Annuity Due 5-7-08
 ZEVO-2/PCT/AUSTRALIA Annuity Due 5-7-08
 ZEVO-2/PCT/EPO Annuity Due 5-7-08
 RIFFE-4A Madrid Due 5-8-08
 RIFFE-1A Madrid Due 5-8-08
 TORT-10 Madrid Due 5-8-08
 QTECH-1 First Annuity 5-9-08
 PEMBER-7/TAIWAN POWER & CERT. COPY 5-9-08-----SENT 1-18-08
 100.146/Taiwan Annuity Due 5-10-08
 CHIP-2 PCT & TAIWAN Due 5-11-08
 MOSK-166 Issue Fees Due 5-12-08
 BOKAM-16 PCT & TAIWAN 5-14-08
 GLASS-1 Statement of Use 5-13-08-----Filed Statement of Use 3-19-08
 STEPHEN-1 Issued Patent First Annuity 5-16-08
 HTR-14/PCT/CANADA Foreign Annuity Due 5-17-08
 HTR-14/PCT/DIV/CANADA Foreign Annuity Due 5-17-08
 HTR-14/PCT/CHINA Foreign Annuity Due 5-17-08
 HTR-10/FWC Issued Patent Third Annuity 5-19-2008
 JMC-1/CANADA Foreign Annuity Due 5-19-08
 JMC-1/ISRAEL Next Annuities Due 5-19-2008
 PEMBER-5 Issued Patent Second Annuity 5-21-2008
 MOSK-176 PCT & Taiwan 5-21-08
 MOSK-177 PCT & TAIWAN 5-24-08
 SHEICO-18/CIP Resp. To 2nd O.A. 5-25-08
 WT-5 Resp. To 1st O.A. 5-28-08
 GRIP-3 Madrid Due 5-29-08
 GRIP-4 Madrid Due 5-29-08
 GRIP-5 Madrid Due 5-29-08
 GRIP-6 Madrid Due 5-29-08
 JMC-1/EPO Foreign Annuity Due 5-29-08
 WATER-35-A/TAIWAN Annuities 5-31-2008
 FISHER-2/CIP Issued Patent Third Annuity 6-3-2008
 SALIDO-6 Statement of Use 6-4-08
 GRIP-4 Madrid Due 6-5-08
 MERLYN-1-PCT/PHILLIPINES Annuity Due 6-6-08
 317/PCT/JAPAN (511,503/2002) Exam Due 6-6-08
 100.317/PCT/CANADA Annuities Due 6-6-08
 ATOMIC-22 PCT & TAIWAN 6-9-08
 094/USA (6,158,245) Issued Patent 2nd Annuity Due (7.5 yrs.) 6-12-08
 068/USA (6,159,398) Issued Patent 2nd Annuity Due (7.5 yrs.) 8-12-08
 ASRC-1/AUSTRALIA Foreign Annuity Due 6-13-2008



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,205,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

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Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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DECLARATION OF CARL WINEFORDNER

Dear Sir:

I, Carl Winefordner, declare as follows:

1. Frank Hermansen and I have a long history with the Law Offices of Leonard Tachner. In all cases involving patents for us, Mr. Tachner's office has paid for our patent maintenance fees, which his office invoices us for (see for example, the attached Exhibit, an October 2001 bill for payment of maintenance fee by Mr. Tachner's office).

2. Somewhat atypically, we have worked with Mr. Tachner in three different ways in regard to obtaining and managing our patents:

a) Mr. Tachner handling the entire patent process including writing the entire patent application, filing the application with the USPTO,

DECLARATION OF CARL WINEFORDNER Continued
Patent No. 6,205,885

handling any office actions, paying the issuing fee, and paying for maintenance fees.

b) Frank and I writing a draft of the patent application (except for the claims), and Mr. Tachner taking over all patent responsibilities including editing the application and writing the claims, filing the application with the USPTO, handling any office actions, paying the issuing fee, and paying for maintenance fees.

c) Frank and I writing a draft of the patent application (except the claims), Mr. Tachner editing the application and writing the claims, Frank and I filing the patent application and paying the issuing fee, and Mr. Tachner's office thereafter taking over all patent responsibilities including paying the maintenance fees. We sometimes worked in this way to save money, as we were a struggling financially up until fairly recently.

3. Frank Hermansen and I have regularly worked with the Law Offices of Leonard Tachner for all of our patent related needs starting in 1995 and up until now. All together, more than 20 US utility patents (and also some design patents and trademarks) have issued during this time with Mr. Tachner as our patent attorney, most of which have been marketed either by licensing, or by making the products.

4. The patent in question here is US 6,205,885. As you will see, by far, this is our single most important patent, which we never intended to become inactive. For this particular patent, we worked with Mr. Tachner using method c) above. Our plan was to turn over this patent to Mr. Tachner as soon as we

DECLARATION OF CARL WINEFORDNER Continued
Patent No. 6,205,885

received the first Office Action, but as it turned out, this patent was approved without any Office Actions. So Frank and I paid for the patent issue fee directly, and then met with Mr. Tachner's secretary, Janis Foreman, and requested that the Law Office of Leonard Tachner take over further responsibility for this patent including future maintenance fees.

5. I am 100% sure that I gave Mr. Tachner's secretary, Janis Foreman, instructions to pay the maintenance fees on our '885 patent and I am without any doubt sure that I never told her that I or we would pay it ourselves. I specifically told Ms. Foreman this in person while Frank and I visited the law office.

6. In 1997, Frank and I started a bicycling related company called Crank Brothers (www.crankbrothers.com) with a single product based on a bicycle tire lever patent that we filed with Mr. Tachner in 1996 (and later issued as 5,857,509). Gradually, Frank and I created more and more products for Crank Brothers, often resulting in patents handled by Mr. Tachner in one of the three methods above. Crank Brothers has steadily grown from \$185,000 in sales during 1997 to over \$11,000,000 in 2007 and an expected \$17,000,000 this year. Our company's success has been almost exclusively due to our proprietary in-house products that Frank and I have created and designed, and the majority of revenue and profit comes from pedals made within our '885 patent. Without a doubt, our intellectual property is our most valuable asset. Our company, and our financial survival, directly depend on our IP, as without it, other companies would copy our products and severely reduce our profits and our way of life. Our products are often more expensive than others on the market, but our products sell because of our proprietary designs.

DECLARATION OF CARL WINEFORDNER Continued
Patent No. 6,205,885

7. We've always felt as inventors that our direct involvement in writing the patent is essential to end up with the strongest possible patent, as during this process of working with our patent attorney, we often discover ways to strengthen the claims and describe alternative embodiments. Due to the small size of our company, and due to the fact that Frank and I have always been and still are the creative force behind the company, we would never consider adding the administrative responsibility of keeping track of and paying for our patent maintenance fees.

8. We started selling '885 pedals in September of 2001, and have sold them continuously up until the present. We always intended for the patent to remain active. The fact is that our '885 pedal sales have increased each and every year starting in 2001.

9. Of all our intellectual property, by far, the single most valuable patent we have is the '885 patent. Currently, we sell around 350,000 pairs of bicycle pedals per year that are protected by this '885 patent. Products protected by this '885 patent account for the majority of Crank Brothers' revenue and profit. Our pedals have become world famous, and the majority of all off-road bicycle professionals use our '885 pedals. More than half of the 2008 Olympic mountain biking riders will be on our pedals, and this is without financial sponsorship from us. The professionals that use our pedals do so because our pedals are simply better by design (lighter and without any problems in mud), as described in our '885 patent. With this design, we have become #1 in sales in the world of premium off-road pedals.

10. However, without our patent '885 being active, without a doubt, other companies will begin to copy our pedals. I am sure that the only reason

DECLARATION OF CARL WINEFORDNER Continued
Patent No. 6,205,885

this has not yet happened is because other companies have not yet realized that our '885 patent has become inactive. Loss of the '885 patent will severely impact the revenue of Crank Brothers (and potentially our 15 employees), and of Frank and me personally, and for my wife and children. I have no doubt that without the re-activation of this patent, Crank Brothers will lose many millions of dollars worth of sales over the coming years. The value of this particular patent is millions of dollars.

11. Frank and I specifically communicated to the Law Offices of Leonard Tachner to take over all patent responsibilities and pay the maintenance fees of the '885 patent. Frank and I (and all Crank Brothers people) were completely unaware that this fee had not been paid until October of 2007, and when we discovered it, I immediately contacted the Law Offices of Leonard Tachner to rectify the situation. For Frank and me, unbelievably, Mr. Tachner's secretary was apparently confused over who was to pay for the maintenance fees of this particular patent, possibly related to the fact that Frank and I had filed for this particular patent directly, but then had handed the responsibility over to Tachner's law office. Frank and I never intended for this patent to become inactive, we always intended for the maintenance fees to be paid, and up until October of 2007 we thought the maintenance fees had been paid. Frank and I thought that we were entirely clear with the Law Offices of Leonard Tachner to pay the maintenance fees on this patent, and we were astonished and appalled when we discovered that they had not been paid.

12. This is a case of a clerical error, which could result in a severe hardship for Frank and me. Please allow us to pay the maintenance fees on our '885 patent.

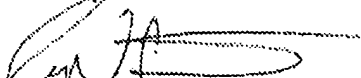
DECLARATION OF CARL WINEFORDNER Continued
Patent No. 6,205,885

13. Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declarations made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the present patent.

Sincerely,

Dated:

July 30, 2008


Carl Winefordner

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AUG 1 2 2008

LEONARD TACHNER
A PROFESSIONAL LAW CORPORATION
REGISTERED PATENT ATTORNEY
17961 SKY PARK CIRCLE
SUITE 38-E
IRVINE, CALIFORNIA 92614-8384

OFFICE OF PETITIONS

October 15, 2001

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TEL: (949) 752-8525
FAX: (949) 855-2415

STATEMENT OF ACCOUNT

Mr. Carl Winefordner
Mr. Frank Hermansen
21542 Ann's Lane
Laguna Beach, CA 92651

Fees for professional services rendered re:

SLIP-2:

Payment of first annuity in the U.S. Patent and
Trademark Office for U.S. Patent No. 5,676,529
entitled "COMPACT MANUAL AIR PUMP HAVING
SELECTABLE HIGH VOLUME AND HIGH PRESSURE
NODES" by inventors Carl Winefordner and Frank
Hermansen including payment of government
fees (\$440)

(1/3 hr. Atty Time @/\$300/hr.): \$ 540.00

Current Balance Due \$ 540.00



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Frank Hermansen et al	Assignee:	California Crank Brothers, Inc.
Patent No.:	6,205,885	Serial No.:	09/391,709
Issued:	March 27, 2001	Filed:	September 8, 1999
Title:	Clipless Bicycle Pedal		

MAIL STOP: PETITIONS

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

AUG 1 2 2000

OFFICE OF PETITIONS

DECLARATION OF FRANK HERMANSEN

Dear Sir:

I, Frank Hermansen, declare as follows:

1. The following is my clear recollection of the events regarding the '885 patent. I have carefully read and I agree with every aspect of Carl Winefordner's declaration.

2. Carl and I together have more than 20 U.S. utility patents. The '885 patent stands out in several ways. It is by far our most successful invention and the only patent we have ever received which was approved without any office actions.

DECLARATION OF FRANK HERMANSEN Continued
Patent No. 6,205,885

3. I recall that we paid for the patent issue fee directly and then met with Mr. Tachner's secretary, Janis Foreman, to request that the Law Office of Leonard Tachner take over all responsibility for this patent including payment of future maintenance fees.

4. Carl and I were stunned to discover that the maintenance fee had not been paid in the required way. I am in as much disbelief as Carl, that this could have happened. We made our instructions and intentions very clear to Mr. Tachner's secretary. Obviously we never intended for this patent to become inactive as this invention is the core of our business.

5. I am completely positive that we requested the Law Office of Leonard Tachner to pay the maintenance fees on this patent as I was present during this conversation. I was astonished when we discovered that the fees had not been paid.

6. Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declarations made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the present patent.

Sincerely,

Dated: 7-30-08

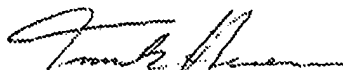

Frank Hermansen

EXHIBIT D



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22311-1450
www.uspto.gov

LEONARD TACHNER, A PROFESSIONAL LAW
CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE CA 92614

COPY MAILED

OCT 15 2008

OFFICE OF PETITIONS
Decision on Petition

In re Patent of Hermansen et al. :
Patent No. 6,205,885 :
Issue Date: March 27, 2001 :
Application No. 09/391,709 :
Filing Date: September 8, 1999 :
Attorney Docket No. SLIP-21 :

This is a decision on the request for reconsideration under 37 CFR 1.378(e), filed July 31, 2008, to reinstate the above-identified patent.

The petition is **granted**.

The instant patent issued March 27, 2001. The last day the maintenance fee could have been timely paid, with a surcharge, was Monday, March 28, 2005. The maintenance fee was not timely paid and the patent expired at midnight on March 28, 2005.

Petitioner requests reinstatement of the patent. Petitioner has met the requirements to reinstate the above-identified patent pursuant to 37 CFR 1.378(h). Therefore, the maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

As of October 1, 2007, the 3.5 year maintenance fee amount increased from \$450 to \$465. The prior petition was filed on October 18, 2007. The prior petition only included \$450 for the maintenance fee. Therefore, \$15 has been charged to petitioner's deposit account for the remainder of the fee.

The file will now be forwarded to Files Repository.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

EXHIBIT E



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22303-1450
www.uspto.gov

LEONARD TACHNER, A PROFESSIONAL LAW
CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE CA 92614

MAILED

JUN 03 2009

In re Patent of Hermansen et al.	:	
Patent No. 6,295,885	:	OFFICE OF PETITIONS
Issue Date: March 27, 2001	:	Decision on Petition
Application No. 09/391,709	:	
Filing Date: September 8, 1999	:	
Attorney Docket No. SLIP-21	:	

This is a *corrected* decision on the petition under 37 CFR 1.378(c), filed July 31, 2008, to reinstate the above-identified patent. The decision mailed October 15, 2008, is hereby vacated.

The petition is **DENIED**. This decision may be viewed as a final agency action within the meaning of 5 U.S.C. 704 for purposes of seeking judicial review. See MPEP 1002.02. The terms of 37 CFR 1.378(e) *do not* apply to this decision.

Since this patent will not be reinstated, the Office has scheduled a refund of maintenance fees and surcharges submitted by petitioner. The fee for requesting reconsideration is not refundable. Therefore the Office has scheduled a refund of:

- (1) \$685 for the surcharge submitted October 18, 2007, and
- (2) \$465 for the 3.5 year maintenance fee submitted October 18, 2007.

The Office has credited the following fees back to petitioner's deposit account:

- (1) \$15 for the remainder of the \$700 surcharge paid October 18, 2007,
- (2) \$65 for the surcharge submitted November 6, 2008, and
- (4) \$1,240 for the 7.5 year maintenance fee submitted November 6, 2008,

BACKGROUND

The patent issued March 27, 2001. The 3.5 year maintenance fee could have been paid from March 27, 2004, through September 27, 2004, or with a surcharge during the period from September 28, 2004, to Monday, March 28, 2005. The maintenance fee was not timely paid and the patent expired at midnight on March 29, 2005.

A petition under 35 U.S.C. 41(c)(1) and 37 CFR 1.378(b) was filed October 18, 2007, and was dismissed in the decision of April 9, 2008.

Petitioner filed a request for reconsideration under 37 CFR 1.378(e) on July 31, 2008.

On October 15, 2008, the Office mailed a decision granting the July 31, 2008 petition. As a result, the patent was reinstated.

Petitioner submitted the 7.5 year maintenance fee and the required surcharge on November 6, 2008.

APPLICABLE STATUTE AND REGULATION

35 U.S.C. 41(b) states in pertinent part that, "Unless payment of the applicable maintenance fee is received . . . on or before the date the fee is due or within a grace period of six months thereafter, the patent shall expire as of the end of such grace period."

35 U.S.C. 41(c)(1) states that, "The Director may accept the payment of any maintenance fee . . . after the six month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable." (emphasis added)

37 CFR 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

A showing that . . . reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee . . . became aware of . . . the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent.

OPINION

Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

In order for a party to prove unavoidable delay, the Office requires the party demonstrate the party exercised the "care or diligence tha[t] is generally used and observed by prudent and careful men in relation to their most important business."¹ However, "the question of whether [delay] was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."² The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision is based solely on the written, administrative record in existence.

¹ *In re Marulath*, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). See also *Ray v. Lehman*, 55 F.3d 606, 34 U.S.P.Q.2d (BNA) 1786 (Fed. Cir. 1995) (citations omitted) ("[I]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.")

² *Smith v. Moszingshoff*, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982).

Facts

Petitioner is Crank Brothers, a bicycle company. The inventors, Carl Winefordner and Frank Hermansen, own Crank Brothers.

During 1995, Attorney Leonard Tachner began representing petitioner with respect to patent matters.

Petitioner worked with Tachner in one of the following three ways with respect to the filing and prosecution of applications for patents:

- (1) Tachner would draft the entire application, file the application, prosecute the entire application, pay the issue fee, and pay maintenance fees;
- (2) The inventors would draft the application, except for the claims, and then hand all further responsibilities, including editing the draft, filing the application, prosecuting the application, paying the issue fee, and paying maintenance fees to Tachner; or
- (3) The inventors would draft the application, except for the claims, Tachner would edit the draft and add claims, the inventors would file the application and pay the issue fee, and Tachner would handle payment of maintenance fees.³

Winefordner indicates the third method was used by the inventors in order to save money. Winefordner has also stated petitioner was "struggling financially up until fairly recently."⁴

Winefordner indicates saving money was not the only benefit of the inventors drafting the application. Winefordner states, "We've always felt as inventors that our direct involvement in writing the patent is essential to end up with the strongest possible patent."⁵

The inventors appear to have used the third method when filing the application which issued as the instant patent. Winefordner states,

Our plan was to turn over this patent to Mr. Tachner as soon as we received the first Office action, but as it turned out, this patent was approved without any Office actions. So Frank and I paid the issue fee directly.⁶

The instant patent issued March 27, 2001.

³ Declaration of Carl Winefordner, Paragraph 3.

⁴ *Ibid.*

⁵ *Id.* at paragraph 7.

⁶ *Id.* at paragraph 4.

On or about March 2001, the inventors "met with Leonard Tachner's secretary, Janis Foreman, to request that the Law Office of Leonard Tachner take over all responsibility for this patent including payment of future maintenance fees."⁷

Foreman states,

Around March 2001, when the Firm received the above-captioned issued patent, I supervised [another employee] to [ensure] entries were made in the docket system for September 27, 2004 (3.5 yr annuity), September 27, 2008 (7.5 yr annuity) and September 27, 2012 (11.5 yr annuity) deadlines for payment of the maintenance fees.⁸

On October 15, 2001, Tachner paid the 3.5 year maintenance fee for another patent, Patent No. 5,676,529. On the same day, Tachner sent petitioner a bill charging petitioner \$440 for the maintenance fee and \$100 for handling payment of the fee.⁹

Tachner also paid maintenance fees for the following patents:

July 12, 2002	3.5 year fee paid for Patent No. 5,857,509 (See Exhibit D3)
February 23, 2004	3.5 year fee paid for Patent No. 6,027,319 (See Exhibit D2)
February 23, 2004	3.5 year fee paid for Patent No. 6,059,245 (See Exhibit D4)
April 15, 2004	3.5 year fee paid for Patent No. 6,085,744 ¹⁰

During mid-2004, petitioner communicated with Janis Foreman. Foreman states,

I recall ... a discussion with the client indicating that they would pay their own annuities. It is not unusual for a client to express the desire to pay their own maintenance fees in order to avoid having to pay the firm the additional service fee we charge for doing so.¹¹

Inventor Winefordner's declaration states, "I am without any doubt sure that I never told [Foreman] that I or we would pay [the maintenance fees for the instant patent] ourselves."¹²

Inventor Hermansen's declaration states, "[Winefordner] and I were stunned to discover that the

⁷ Declaration of Frank Hermansen, Paragraph 5. See also Winefordner Declaration, Paragraph 5.

⁸ Declaration of Janis Foreman, Paragraph 3

⁹ See Attachment to Winefordner declaration.

¹⁰ Although a copy of the front of the folder for this patent has not been supplied, Office records indicate the 3.5 year fee was charged to Tachner's Deposit Account.

¹¹ Foreman declaration, Paragraph 4.

¹² Paragraph 5.

maintenance fee had not been paid [by Tachner, and] I am in as much disbelief as [Winefordner] that this could have happened."¹³

Foreman has stated, "[T]here appears to have been confusion between the client and myself regarding who would pay the maintenance fees."¹⁴

Foreman states the instructions for Tachner's Office to discontinue handling maintenance fees came from the "client." Foreman fails to specify if the instructions came from Winefordner, Hermansen, or both. However, Tachner's declaration indicates Foreman has stated she was "instructed by Winefordner and Hermansen that they would be paying their own maintenance fees."¹⁵

Attorney Tachner has declared, "I believe Ms. Foreman either did not unambiguously understand the client's instruction or was distracted or confused, or was not functioning in her usually dependable way."¹⁶ Tachner also states, "I earnestly believe that Ms. Foreman misunderstood the instructions of our client ... in regard to who would be responsible to pay their future maintenance fees."¹⁷

After the communication between Foreman and both inventors, Foreman changed the law firm's records to indicate petitioner would be paying petitioner's own maintenance fees in the future. As a result, the maintenance fee was not timely paid for the instant patent and the patent expired on March 29, 2005. The changes to the firm's records also resulted in the expiration of Patent No. 5,676,529 on October 15, 2005, and Patent No. 5,857,509 on January 23, 2007.

During October 2007, petitioner discovered the maintenance fees had not been paid for the instant patent and immediately contacted the law firm.

Analysis

A reasonable and prudent owner of a patent would take steps to ensure maintenance fees would be timely paid. Such steps can take the form of retaining an attorney to notify the owner of due dates for maintenance fees.¹⁸ In this case, the facts are clear that petitioner initially retained Tachner and relied on Tachner to inform petitioner of when maintenance fees became due for petitioner's patents. However, at some point prior to September 22, 2004, when the first maintenance fee became due, an entry was made in the docket records that "the client will pay

¹³ Paragraph 4.

¹⁴ Foreman declaration, Paragraph 7.

¹⁵ Paragraph 4 (emphasis added).

¹⁶ Declaration of Leonard Tachner, Paragraph 8.

¹⁷ *Id.* at Paragraph 10.

¹⁸ See *California Med. Products, Inc. v. Tecon Med. Products, Inc.*, 921 F. Supp. 1219, 1259 (D. Del. 1995).

their own annuities.¹⁹ The record is not clear that an error in docketing the payment of the maintenance fees occurred. The facts as set forth in the Foreman declaration do not show that any error in docketing was made by the party responsible for maintaining the docket records. What the facts of record show is that there was confusion between the client and the attorney over who would pay the maintenance fee.²⁰ Thus it cannot be concluded that petitioner has made an adequate showing of docketing error.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish the delay was unavoidable.²¹ Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Commissioner that the delay in payment of a maintenance fee is unavoidable.²² It is impossible to say which version of the facts is accurate, Foreman's or Winefordner's and Hermansen's. The finding of one set of facts to be accurate is not the duty of the Director of the United States Patent and Trademark Office. Whereas here alternative scenarios or conflicting facts are put forward, a determination will not be made by the Director as which version is true since such a determination would require the Director to make affirmative findings. Petitioner has not carried the burden.

Petitioner states that Tachner was the party relied upon to track and pay maintenance fees. Such a showing establishes that petitioner was reasonable on relying on Tachner. However, reliance on a third party representative does not, per se, constitute "unavoidable" delay. Instead, when a party relies on an attorney to take certain steps, the petition must address not only the party's actions but also address the attorney's actions or inactions.²³

¹⁹ Foreman declaration, paragraph 4.

²⁰ Foreman declaration, paragraph 7.

²¹ Cf. *Comissariat A. L'Énergie Atomique v. Watson*, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126, 128 (D.C. Cir. 1960) (35 U.S.C. § 133 does not require the Commissioner to affirmatively find that the delay was unavoidable, but only to explain why the applicant's petition was unavailing).

²² See *Rydeen v. Quigg*, 748 F. Supp. 900, 16 U.S.P.Q. 2d (BNA) 1876 (D.D.C. 1999), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991)(table); See also *Ray v. Lehman*, 55 F.3d 606 (Fed. Cir. 1995) and *Burund v. Dudas*, 496 F. Supp. 2d 643, 649 (E.D. Va. 2007) ("A patent owner seeking to reinstate an expired patent bears the burden of proving that the delay was 'unavoidable.'" (quoting *R.R. Donnelley & Sons, Co. v. Dickenson*, 123 F. Supp. 2d 456, 459 (N.D. Ill. 2000)).

²³ See *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 396, 397 (1993) ("The [Circuit] court also appeared to focus its analysis on whether respondents did all they reasonably could in policing the conduct of their attorney, rather than on whether their attorney, as respondents' agent, did all he reasonably could to comply with the court-order bar date. In this, the court erred. . . . [I]n determining whether respondents' failure to file their proof of claim prior to the bar date was excusable, the proper focus is upon whether the neglect of respondents and their counsel was excusable." (emphasis in original)). In *Huston v. Ladner*, 973 F.2d 1564, 1567, 23 U.S.P.Q. 2D (BNA) 1919 (Fed. Cir. 1992), the court determined the client was bound by the attorney's actions. The majority was unpersuaded by the dissent which states in part that the "errors occurred despite exceptional vigilance by the client."

The Supreme Court has stated,

Petitioner voluntarily chose his attorney as his representative in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected agent ... Each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'²⁴

Here the record fails to show that adequate steps within the meaning of 37 C.F.R. § 1.378(b)(3) were taken by or on behalf of petitioner to pay the fee after the docket entries were removed by Ms. Foreman. Petitioner is reminded that 37 C.F.R. § 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for petitioner's showing of the steps taken to pay the fees.²⁵ In the absence of a showing of the steps taken by or on behalf of petitioner, 37 C.F.R. § 1.378(b)(3) precludes acceptance of the maintenance fee.²⁶

It is well established that failure in communications between a client and his or her attorney does not constitute unavoidable delay. Here it would appear that a misunderstanding has occurred over who would be responsible for tracking and paying the maintenance fee. The failure in communication is not considered to be unavoidable error. Delay resulting from a lack of proper communication between an applicant and his representative as to the responsibility for timely filing a communication with the USPTO does not constitute unavoidable delay.²⁷ Moreover, the USPTO is not the proper forum for resolving a dispute between a patent owner and his representative as to who bore responsibility for paying a maintenance fee.²⁸

Decision

The prior decision which accepted the delayed payment of a maintenance fee for the instant patent has been vacated. For the reasons herein, the entire delay in this case cannot be regarded

²⁴ *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-634, 81 L. Ed. 2d 734, 82 S. Ct. 1386 (1962) (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1880)).

²⁵ *Ray*, 55 F.3d at 609, 34 U.S.P.Q. 2d (BNA) at 1783.

²⁶ See *Korsinsky v. Godici*, 2005 U.S. Dist. LEXIS 20850 at *13 (S.D. N.Y. 2005), *aff'd sub nom. Korsinsky v. Dudas*, 2007 U.S. Dist. LEXIS 7896 (Fed. Cir. 2007); *R.R. Donnelley & Sons, Co. v. Dickinson*, 123 F. Supp. 2d 456, 459 (N.D. Ill. 2000) (failure of patent owner to itself track or obligate another to track the maintenance fee precluded acceptance of the maintenance fee); *California Med. Products, Inc. v. Technol Med. Products, Inc.*, 921 F. Supp. 1219, 1259 (D. Del. 1995); *MHTC v. Rogan*, 369 F. Supp. 2d 675 (E.D. Va. 2004) (passive reliance on USPTO reminder notice resulting in failure to take any steps to ensure payment of the maintenance fee is not unavoidable delay); *Fempsec v. Dudas*, 2007 U.S. Dist. LEXIS 8482 (N.D. Cal. 2007) (lack of any steps in place to maintain patent in force by estate executor unfamiliar with patent law is not unavoidable delay); *Burandt v. Dudas*, 496 F. Supp. 2d 643, 650 (E.D. Va. 2007) (delay not unavoidable where no steps shown to be employed to remind responsible party to timely pay maintenance fees).

²⁷ See *In re Kim*, 12 U.S.P.Q. 2d (Comm'r Pat. 1988); *Roy v. Lehman*, 55 F.3d 606, 610, 34 U.S.P.Q. 2d (BNA) 1786, 1789 (Fed. Cir. 1995).

²⁸ *Ray*, 55 F.3d at 610, 34 U.S.P.Q. 2d at 1789.

as unavoidable within the meaning of 35 U.S.C. 41(c)(1) and 37 CFR 1.378(b). Therefore, the petition is **denied**.

As stated in 37 CFR 1.378(e), the Office will not further consider or review the matter of the reinstatement of the patent.

The patent file is being forwarded to Files Repository.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read "Charles Pearson", followed by a horizontal line.

Charles Pearson
Director
Office of Petitions

EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	§	Atty Docket No.: 70614.30
Frank HERMANSEN, et al.	§	
	§	U.S. Patent No. 6,205,885
Appln. No.: 09/391,709	§	
	§	Issued: March 27, 2001
Filed: Sept. 8, 1999	§	
	§	
For: CLIPLESS BICYCLE PEDAL	§	

**DECLARATION OF TOM CHEN IN SUPPORT OF SUPPLEMENTAL PETITION FOR
RECONSIDERATION AND ACCEPTANCE OF DELAYED PAYMENT OF
MAINTENANCE FEES UNDER 37 C.F.R. § 1.182, § 1.183, and § 1.378**

Mail Stop Petitions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Tom Chen, declare and say that I have direct knowledge of all facts set forth in this Declaration and:

1. I am a registered patent attorney. I was admitted to the State Bar of California in 1996 (Cal. Bar No. 184,843) and have remained in good standing since then. I was admitted to practice before the United States Patent & Trademark Office ("USPTO") in 1998 (Reg. No. 42,406). I am a partner of Haynes and Boone, LLP. Ms. Annie McNally is my administrative assistant.
2. I am now an attorney of record in connection with U.S. Patent No. 6,205,885 to Hermansen et al. ("Hermansen '885"), which is assigned of record to California Crank Brothers, Inc. ("Crank Brothers").
3. On January 21, 2010, APTA (Associated Patent & Trademark Attorneys) (an Italian firm representing Selle Royal S.p.A., now the parent of Crank Brothers) asked me if we had received any confirmation from the USPTO about the late payment of the maintenance fees for Hermansen '885.
4. Attached as Exhibit 1 is a copy of a document that Ms. McNally downloaded for me from the USPTO PAIR system on January 21, 2010. Exhibit 1 indicates that Hermansen '885 expired on March 27, 2009.
5. On or about February 17, 2010, I had a telephone conversation with Leonard Tachner, Crank Brothers' prior patent counsel, who told me that he believed Hermansen '885 was still in

PATENT

force since the last correspondence he received from the USPTO was a Decision dated October 15, 2008 which granted a Petition for Acceptance of Delayed Payment of Maintenance Fees for Hermansen '885.

6. During my telephone conversation with Mr. Tachner that took place on or about February 17, 2010, Mr. Tachner stated that he had not received any correspondence from the USPTO which indicated that Hermansen '885 had expired and that none of the maintenance fees he paid for Hermansen '885 had been credited to his Deposit Account with the USPTO.

7. The original file jacket covers for Crank Brothers' U.S. patent matters that were transferred to Haynes and Boone by Tachner do not include any erasures, white-outs, or coverups, and the only changes to such file covers that were made by Haynes and Boone are the addition of a tracking label in the upper left corner and an attorney docket number in the upper right corner.

8. On July 7, 2010, I sent an email to Mr. Tachner and asked him if he had any copies of maintenance fee correspondences between both the PTO and Crank Brothers. Also, on July 7, 2010, Mr. Tachner responded to my email and stated that:

"I don't remember any special treatment of the Crank Brothers files, but as a general rule we don't keep separate files for maintenance fees."

Attached as Exhibit 2 is a copy of the email I sent to Mr. Tachner on July 7, 2010 and his response of the same date.

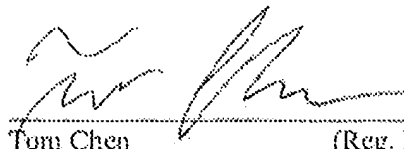
9. I declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. § 1001 and may jeopardize the validity of the present patent.

Respectfully submitted,

HAYNES AND BOONE, L.L.P.

July 19, 2010

Date


Tom Chen

(Reg. No. 42,406)

HAYNES & BOONE LLP

Customer No. 27683

Phone: 949-202-3030

Fax: 214-200-0853

EXHIBIT 1

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**United States
Patent and
Trademark Office**

Patent Bibliographic Data		01/21/2010 12:27 PM	
Patent Number:	6205885	Application Number:	09391709
Issue Date:	03/27/2001	Filing Date:	08/08/1999
Title:	CLIPLESS BICYCLE PEDAL		
Status:	APC status indicates patent expired on: 03/27/2009		Entity: Small
Window Opens:	03/29/2004	Surcharge Date:	09/28/2004
Fee Amt Due:	\$0.00	Surchg Amt Due:	\$0.00
Fee Code:		Total Amt Due:	\$0.00
Surcharge Fee Code:			
Most recent events (up to 7):	06/04/2009 Refund - Payment of Maintenance Fee, 4th Yr, Small Entity. 06/04/2009 Refund - Surcharge, Petition to Accept Pymt After Exp, Unavo 06/04/2009 Refund - Payment of Maintenance Fee, 8th Yr, Small Entity. 06/04/2009 Refund - 7.5 yr surcharge - late pmt w/in 6 mo, Small Entity 06/03/2009 Petition Related to Maintenance Fees Denied/Dismissed. 10/15/2008 Petition Related to Maintenance Fees Granted. 07/31/2008 Petition Related to Maintenance Fees Filed. --- End of Maintenance History ---		
Address for fee purposes:	LEONARD TACHNER, A PROFESSIONAL LAW CORPORATION 17861 SKY PARK CIRCLE, SUITE 38-E IRVINE, CA 92614		
NOTE: All USPTO fees are subject to change. If you are making a payment by mail or fax, please visit this link or contact the Maintenance Fee Branch (571-272-6500) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.			
Run Another Query			

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EXHIBIT 2

Chen, Tom

From: Ltachner@aol.com
Sent: Wednesday, July 07, 2010 4:38 PM
To: Chen, Tom
Subject: Re: Crank Brothers documents

Tom: I don't remember any special treatment of the Crank Brothers files, but as a general rule we don't keep separate files for maintenance fees. Leonard

In a message dated 7/7/2010 2:48:29 P.M. Pacific Standard Time, Tom.Chen@haynesboone.com writes:

Hi Leonard,

Please let me know if you have any copies of maintenance fee correspondences (between both the PTO and Crank Brothers). We have the various files you sent over, but was wondering if there was anything not included, such as if you kept separate files for maintenance fees. Thanks.

Tom

7/12/2010

EXHIBIT G

Carl Winefordner

From: Carl Winefordner [carl@crankbrothers.com]
Sent: Thursday, March 27, 2008 5:10 PM
To: JFOREMANTACHLAW@aol.com
Subject: RE: slip 26 PCT
Attachments: image001.gif

Dear Janis:

Okay, noted to the PCT cost. Yes, please proceed with the SLIP 26 PCT.

Is Slip 21 the file name for the 6,205,885 patent? If so, then is there anything that we can/should do to up the odds that it goes through? Can we expedite it? Can we send a person in to meet with the USPTO? There are many millions of dollars of revenue potentially riding on this, because I'm sure that we will be copied heavily if the bike industry figures out that we don't have an active patent. Last year we sold over \$7,000,000 worth of pedals under this patent, and this year it will be more. It is the majority of our business still. I'm really worried that our patent is not active.

Thanks,

Carl



carl winefordner || engineering ||
crankbrothers
310 Broadway
Laguna Beach, CA 92653
p: 949 464 8816 f: 949 328 2010
crankbrothers@cslls



From: JFOREMANTACHLAW@aol.com [mailto:JFOREMANTACHLAW@aol.com]
Sent: Thursday, March 27, 2008 4:44 PM
To: carl@crankbrothers.com
Subject: Re: slip 26 PCT

Hi Carl: I will prepare the PCT application for SLIP-26 and get it filed by the deadline of April 5th. The cost will be \$4,500.00 (there are claims over 20 and an additional independent claim). I am attaching our Statement of Account for the PCT application. SLIP-21. I have checked with the USPTO but they haven't made a decision yet.

Best regards, Janis

Create a Home Theater Like the Pros. [Watch the Video on AOL Home.](#)

EXHIBIT H

PLEASE ACKNOWLEDGE BY DATE STAMPING, RECEIPT OF THE FOLLOWING:

1. CHANGE OF CORRESPONDENCE ADDRESS (PATENT), FOR U.S. PATENT
NO. 6,205,885, ISSUED MARCH 27, 2001, APPLICATION SERIAL
NO. 09/391,709 FILED ON SEPTEMBER 8, 1999 BY FRANK
HERMANSEN et al, ATTORNEY DOCKET NO. SLIP-21 (1 Page).



EXHIBIT I

FO2716778
URSHINGB
R2853

OF LEONARD TACHNER

REGISTERED PATENT ATTORNEY

3990 WESTERLY PLACE

SUITE 205

NEWPORT BEACH, CALIFORNIA 92660

(714) 752-8525

ISSUED

0102/62/90

INVENTOR

FARUK HERMANSEN AND CARL WINSTON WEAVER

SERIAL NO.

08/680,749

FILED

7-15-96

TITLE

COMPACT MANUAL AIR PUMP HAVING SELECTABLE
HIGH VOLUME AND HIGH PRESSURE MODES

ASSIGNEE

ASSIGNMENT RECORDED

REEL

FRAME

OFFICE ACTIONS

AMENDMENTS

1-22-97 Resp to Ist O.A.

3-12-96 a me.

5-5-97 Issue fees + Drugs

5-5-97 p.d. drugs

4-14-2001 First Annuity

10-15-2001 p.d. w/annuity

4-14-2003 Second Annuity

p.d. w/PST 10-3-03

4-14-2005 Third Annuity

CANADIAN

INVENTOR

FARUK HERMANSEN AND CARL WINSTON WEAVER

SERIAL NO.

08/680,749

OTHER INFORMATION

FINAL FEE PAID

DATE October 14 1997

ISSUED

EXHIBIT J

0078614 00239
 Patent Counsel Manual Air Pump Having Selectable High
 Pressure Dependence
 08/27/97
 USHINCB
 82853

OF LEONARD TACHNER
 REGISTERED PATENT ATTORNEY
 3990 WESTERLY PLACE
 SUITE 295
 NEWPORT BEACH, CALIFORNIA 92660
 (714) 752-8525

ISSUED

INVENTOR Carl Wierfaden and Frank Hermansen
 SERIAL NO. 08/245,063 FILED 4-21-97
 TITLE COMPACT MANUAL AIR PUMP MACHINE
SELECTABLE HIGH VOLUME AND HIGH PRESSURE MODES

ASSIGNEE

ASSIGNMENT RECORDED

FEE

FRAME

OFFICE ACTIONS

AMENDMENTS

3-31-99 Resp to First O.A.

4-18-99 amend 1st ext.

4-16-99 Supp. Am.

2-8-99 Resp to 2nd O.A.

9-3-99 am.

12-27-99 Issue First Formal Days

12-23-99 pl. drawings added, chg.

8-22-03 First Annuit.

2-23-04 pl. upsur.

8-22-07 Second Annuit.

10-2-07 pl. upsur.

8-22-2011 Third Annuit.

07/09/2010

FINAL FEE PAID

DATE February 22, 2000

ISSUED

CLIENT'S TITLE

CONTINUATION IN PART OF 08/245,063 3-25-96

CANADIAN

INVENTOR

SERIAL NO.

OTHER FOREIGN

08/245,063

EXHIBIT K

Isabel

06/29/2010

5110-3

UNRECORDED

111

ZZZZZ

Office Actions

11/11/2011

4-24-97 Resp. to First O.D.

14-00000

3-24-78 Resp to Second (oral) O.A.

1990

10-14-98 Issue Res + formal Answer

10-55-56

7-1-2001 East Avenue

1997

7-12-2006 Second Penalty

0000301452

7-14-2010 Third Anniversary

C/04874653/4/1

443

Miss Emma Clark, 2102

Figure 1

Figure 1

2434

3,857 309

January 12, 1998

ISSUED

00000000000000000000000000000000

EXHIBIT L

15500

INVENTOR Frank Heermann and Carl Winc. Fredner
SERIAL NO. 01/00, 3d FILED 6-19-98
TITLE Locking water bottle cage
for bicycles

153242

ASSIGNMENT BECOMING

443

www.elsevier.com/locate/jmb

OFFICE ACTIONS

2014年12月

10-30-99 Resp. to Envt. A.A.

029944

12-B-99 Lincee East Small Deger

RECEIVED

11-9-03 First Anniversary

2230

11-9-07 Second Amendment

11-9-11 Third Amount

26-41-5 868620760 06/29/2010

3

1503476

36471626 683874000000

01/01/2011 11:45 AM

2222

1. *Journal of the American Medical Association*, 1997; 277: 103-107.

100%

1500

EXHIBIT M

0070614 00824
 United States Patent and Trademark Office
 Washington, DC 20503
 00716689
 J15H1N53
 82853

Filed by
T. Sood

01071627190

CLIENT or TITLE

INVENTOR FRANK HERMENSEN and CARL WINEFORDNER
 SERIAL NO. 01/375,243 FILED 2-27-03
 TITLE METHOD OF FABRICATING A CLIPLESS BICYCLE
PEDAL

ASSIGNEE

ASSIGNMENT RECORDED

REF.

FRAME

OFFICE ACTIONS

AMENDMENTS

2-27-04 PCT and Taiwan

2-26-04 done

7-24-04 Restriction/Election Req.

7-26-04 done

12-30-04 Issue Fee & Dis.

12-30-04 done

8-8-08 1st Annuity

11-6-08 1st Annuity

8-8-12 2nd Annuity

8-8-16 3rd Annuity

CANADIAN

INVENTOR

Frank Hermensen, Carl Winefordner

SERIAL NO.

01/375,243

OTHER FOREIGN

CLASS

15, 6, 20, 13, 6

DATE OF FILING

February 8, 2003

T. Sood

EXHIBIT N

10/10/80
 11/11/80
 12/12/80

13060

INVENTOR CARL WUNDERLICH AND FRANK HEERMANNSEN
SERIAL NO. 10/802,105 FILED 3-16-04
TITLE BICYCLE PEDAL AND CRANK
APPARATUS
ASSIGNEE _____
ASSIGNMENT RECORDED September 9, 2006 REEL 018334 FRAME 0001

06/29/2010

08/19/93

11/11/00 10:00 AM 10:00 AM

10/202105

OFFICE ACTIONS	AMENDMENTS
3-16-05 P. To Taiwan due	Added 3-16-05
10-11-06 Rep. to 1 st O.A.	10-23-06 one
12-17-06 Rep. to 2 nd Fin. O.A.	
4-16-07 1 st Fee's Due	4-16-07 pd
12-5-10 First Annuity	
12-5-11 Second Annuity	
12-5-18 Third Annuity	

ALLOWED _____ FINAL FEE PAID _____
PATENT NO. US 7,257,038 B2 DATE JUNE 5, 2007

Issued

EXHIBIT O

0070614 00033

102716700
STARS IRH
02052

ISSUED

INVENTOR

Frank Hermansen and Carl Winifordner

SERIAL NO.

09/391,709

FILED

9-8-99

TITLE

Clipless Bicycle Pedal

ASSIGNED

ASSIGNMENT RECORDED

REEL

FRAME

OFFICE ACTIONS

AMENDMENTS

9-27-04 First Annuity
 9-27-08 Second Annuity
 9-27-12 Third Annuity

Patent to be prosecuted
 11-6-08 up/rev

0102/62/90
06/29/2010

CLIENT OR TITLE

SUIP-21

CANADIAN

INVENTOR

Hermansen, Frank et al.

OTHER FILE NO.

SERIAL NO.

09/391,709

CLASS

US 6,305,325 B1

FEE RECEIVED

DATE

March 27, 2001

ISSUED

EXHIBIT P



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

P75A
LEONARD TACHNER, A PROFESSIONAL LAW
CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE CA 92614

DATE PRINTED
04/27/05

NOTICE OF PATENT EXPIRATION

According to the records of the U.S. Patent and Trademark Office (USPTO), payment of the maintenance fee for the patent(s) listed below has not been received timely prior to the end of the six-month grace period in accordance with 37 CFR 1.362(e). THE PATENT(S) LISTED BELOW HAS THEREFORE EXPIRED AS OF THE END OF THE GRACE PERIOD, 35 U.S.C. 41(b). Notice of the expiration will be published in the USPTO Official Gazette.

Expired patents may be reinstated in accordance with 37 CFR 1.378 if upon petition, the maintenance fee and the surcharge set forth in 37 CFR 1.20(i) are paid, AND the delay in payment of this maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional. 35 U.S.C. 41(c)(1).

If the Director accepts payment of the maintenance fee and surcharge upon petition under 37 CFR 1.378, the patent shall be considered as not having expired but would be subject to the intervening rights and conditions set forth in 35 U.S.C. 41(c)(2).

For instructions on filing a petition under 37 CFR 1.378 to reinstate an expired patent, you may call the USPTO Contact Center at 800-786-9199 or 703-308-4357.

PATENT NUMBER	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPLICATION FILING DATE	EXPIRATION DATE	ATTORNEY DOCKET NUMBER
6205885	09391709	03/27/01	09/08/99	03/28/05	19760

EXHIBIT Q

Carl Winefordner

From: Carl Winefordner [carl@crankbrothers.com]
Sent: Monday, July 14, 2008 9:02 AM
To: ltachner@aol.com
Cc: Frank Hermanson
Subject: pedal patent
Attachments: image001.gif

Dear Leonard:

Thank you again for meeting with us last Friday.

Upon more thought, I wanted to make a couple of comments and suggestions regarding getting our pedal patent active.

1. We asked if there was a second chance (an appeal) if the USPTO declined the petition, and you said that you were fairly sure that there was. I think it's important that you make absolutely sure that there will be a second chance if they come back the first time with a "no" answer.
2. If there is no second chance, then it seems like we better do whatever is possible before they answer to ensure a "yes" answer.
3. We don't know what you included in the petition, but it seems like there are a few facts that heavily support the reality that we never intended this patent to go inactive. Specifically the fact that our company make millions of dollars in revenue making pedals that fall within this patent (hundreds of thousands of pedals per year), and that of our more than 20 patents, this is the single most important one. Even if this is not a legal argument, perhaps it would help our case? For sure, we would suffer a significant hardship if this patent stays inactive, and it would put our company at risk. Can this info be passed along to the examiner?
4. It seems logical that what the patent office wants to prevent is people purposely letting their patents go invalid, and only after some other company starts making an "infringing" product, do they change their minds and want to get it valid again. In that case, it's possible that another company has actually relied upon that patent being invalid in coming out with their product. However, in our case, this is absolutely not the case. There is currently nobody infringing on us (yet), but it could happen at anytime.

Please let me know your thoughts.

Sincerely,

Carl

EXHIBIT R

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	§	Atty Docket No.: 70614.30
Frank HERMANSEN, et al.	§	
	§	
Appln. No.: 09/391,709	§	U.S. Patent No. 6,205,885
	§	
Filed: Sept. 8, 1999	§	Issued: March 27, 2001
	§	
For: CLIPLESS BICYCLE PEDAL	§	

**DECLARATION OF CARL WINEFORDNER IN SUPPORT OF SUPPLEMENTAL
PETITION FOR RECONSIDERATION AND ACCEPTANCE OF DELAYED
PAYMENT OF MAINTENANCE FEES UNDER 37 C.F.R. § 1.182, § 1.183, and § 1.378**

Mail Stop Petitions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Carl Winefordner, declare and say that I have direct knowledge of all facts set forth in this Declaration and:

1. I am named as an inventor of the subject matter claimed in U.S. Patent No. 6,205,885 to Hermansen et al. ("Hermansen '885").
2. I am a principal of Crankbrothers, Inc., formerly known as California Crank Brothers, Inc. ("Crank Brothers") the current assignee of record of Hermansen '885. I have reviewed and approved the Supplemental Petition in connection with the effort to revive Hermansen '885.
3. In the past, Crank Brothers' engaged the services of Leonard Tachner ("Tachner") for patent preparation, prosecution and maintenance for both United States and foreign matters. I was the contact person at Crank Brothers for all correspondence and contacts with Tachner.
4. During the attempts by Tachner to reinstate Hermansen '885, Tachner never provided me or, to the best of my knowledge, anyone else at Crank Brothers with copies of (i) the Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b) (the "Petition") filed by Tachner on October 18, 2007, (ii) the Declaration of Janis Foreman filed with the Petition, (iii) the Request for Reconsideration of Petition for Acceptance of Delayed Payment of Maintenance Fee Under Rule 1.378(b) (the "Request") filed by Tachner on July 31, 2008, nor (iv) the Declaration of Leonard Tachner filed with the Request.
5. I learned within the last month from Crank Brothers' current patent counsel that Crank Brothers' U.S. Patent No. 5,676,529 to Hermansen ("Hermansen '529") expired twice, namely

on or about October 15, 2001 and on or about October 15, 2005. While I learned about the second expiration as discussed below, it was only recently that I learned from current patent counsel that the '529 patent expired a first time in 2001. Tachner never informed me or Crank Brothers that Hermansen '529 had expired either time. Tachner also never provided me or, to the best of my knowledge, anyone at Crank Brothers with copies of the Petition to Accept Late Payment of Maintenance Fee filed by Tachner on October 3, 2007, the Decision on the Petition granting the second reinstatement, or any other communications to or from the U.S. Patent and Trademark Office ("USPTO") concerning either expiration and reinstatement of Hermansen '529.

6. I have been informed recently by Crank Brothers' current patent counsel that Crank Brothers' U.S. Patent No. 5,857,509 to Winefordner ("Winefordner '509") expired on or about January 13, 2007. I have also been informed recently by Crank Brothers' current patent counsel that a Petition to Accept Late Payment of Maintenance Fee for Winefordner '509 was filed by Tachner on October 3, 2007 and was apparently granted by a Decision on the Petition was mailed on October 3, 2007. Tachner never informed me or, to the best of my knowledge, anyone at Crank Brothers that Winefordner '509 had ever expired. Tachner also never provided me or Crank Brothers with copies of the Petition to Accept Late Payment of Maintenance Fee, the Decision on the Petition or any other documents concerning the expiration and reinstatement of Winefordner '509.

7. As a result of my attendance at the 2007 Interbike tradeshow in Las Vegas I first learned that Tachner had failed to pay the first maintenance fee for Hermansen '529. The 2007 Interbike tradeshow was held from September 25 to September 30, 2007 and on Thursday, September 27, 2007, I met with one of Crank Brothers' bicycle pump vendors who Crank Brothers had accused of infringing Hermansen '529. At this meeting, Crank Brothers' pump vendor informed me that the maintenance fee had not been paid on Hermansen '529 and as such the patent was not enforceable. After the meeting, I immediately contacted Tachner. Attached as Exhibit 1 is a copy of an email sent to me on September 28, 2007 by Tachner's secretary Janis Foreman. As noted in Exhibit 1, Ms. Foreman stated that:

"Unfortunately the patent office website is down. I will check into this first thing on Monday when the website is working again. I have it listed as paid."

To the best of my recollection, upon my return home from the Interbike tradeshow, I went onto the USPTO website to check the status of Hermansen '529 and at that point also discovered that Hermansen '885 had expired for failure to pay the first maintenance fee. I immediately contacted Tachner again to inform him about this additional problem. Attached as Exhibit 2 is a copy of an email sent to me on October 3, 2007 by Tachner's secretary Janis Foreman. As noted in Exhibit 2, Ms. Foreman stated that:

"I will file a petition for SLIP-21 [Hermansen '885] but I won't have any feedback today because they are three hours ahead.

...

Attached is the maintenance fee statement showing the annuity has been paid for SLIP-2 [Hermansen '529]."

8. Regarding the first and second maintenance fees for Hermansen '885, attached as Exhibit 3 is a copy of an invoice dated October 21, 2008 that Tachner sent to Crank Brothers for such maintenance fees. It is my understanding that these fees were refunded by the USPTO to Tachner's deposit account on June 4, 2009. Crank Brothers has never received any notification from Tachner that these fees were refunded by the USPTO to Tachner. Crank Brothers has also never received a refund of these fees from Tachner.

9. I declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. § 1001 and may jeopardize the validity of the present patent.

Respectfully submitted,

July 19, 2010
Date

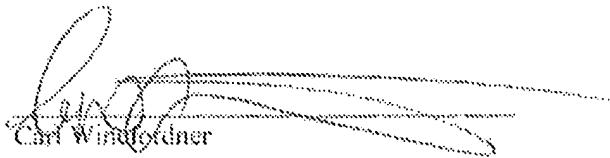

Carl Windfordner

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

LEONARD LACHNER
A PROFESSIONAL LAW CORPORATION
REGISTERED PATENT ATTORNEY
17001 LISKY PARK CIRCLE
SUITE 30-E
IRVINE, CALIFORNIA 92614-6364

October 21, 2008

PATENTS
TRADEMARKS
COPYRIGHTS

TEL: (949) 752-8828
FAX: (949) 955-2418

STATEMENT OF ACCOUNT

Mr. Carl Wingfordner
Mr. Frank Hermanson
Crunk Brothers, Inc.
310 Broadway
Laguna Beach, CA 92651

Fees for professional services re

SLIP-21:

Payment of 1st annuity in the U.S. Patent and
Trademark Office for U.S. Patent No.
6,205,883 entitled CLIPLESS BICYCLE PEDAL
by inventors Carl Wingfordner and Frank
Hermanson including payment of government
fees (\$400)
(Q.R. in Any Time @ \$350/hr)

\$ 640.00

SLIP-21:

Payment of 2nd annuity in the U.S. Patent and
Trademark Office for U.S. Patent No.
6,205,883 entitled CLIPLESS BICYCLE PEDAL
by inventors Carl Wingfordner and Frank
Hermanson including payment of government
fees (\$1,100)
(Q.R. in Any Time @ \$350/hr)

\$ 1,100.00

Current Balance Due

\$ 1,093.00

EXHIBIT S

08/880,749	COMPACT MANUAL AIR PUMP HAVING SELECTABLE HIGH VOLUME AND HIGH PRESSURE MODES	07-13- 2010::09:01:06
------------	--	--------------------------

Transaction History

Date	Transaction Description
10-03-2007	Mail-Petition Decision - Accept Late Payment of Maintenance Fees - Granted
10-03-2007	Petition to Accept Late Payment of Maintenance Fee Payment Filed
11-16-2005	Expire Patent
03-07-2002	Reinstate Patent
11-20-2001	Expire Patent
10-14-1997	Recordation of Patent Grant Mailed
09-08-1997	Issue Notification Mailed
05-07-1997	Issue Fee Payment Verified
06-14-1997	Drawing(s) Processing Completed
06-14-1997	Drawing(s) Matched to Application
06-13-1997	Drawing(s) Received at Publications
05-17-1997	Mailroom Date of Drawing(s)
02-03-1997	Mail Notice of Allowance
02-03-1997	Notice of Allowance Data Verification Completed
02-03-1997	Mail Examiner's Amendment
02-03-1997	Examiner's Amendment Communication
01-29-1997	Case Docketed to Examiner in GAU
01-16-1997	Date Forwarded to Examiner
12-17-1996	Response after Non-Final Action
10-22-1996	Mail Non-Final Rejection
10-15-1996	Non-Final Rejection
09-06-1996	Case Docketed to Examiner in GAU
08-29-1996	Application Captured on Microfilm
07-29-1996	Initial Exam Team nn

[Close Window](#)

EXHIBIT T

08/718,766 BICYCLE TIRE LEVER

07-13-
2010:09:01:48**Transaction History**

Date	Transaction Description
10-03-2007	Mail-Petition Decision - Accept Late Payment of Maintenance Fees - Granted
10-03-2007	Petition to Accept Late Payment of Maintenance Fee Payment Filed
02-14-2007	Expire Patent
01-12-1999	Recordation of Patent Grant Mailed
12-22-1998	Issue Notification Mailed
12-07-1998	Issue Notification Mailed
10-21-1998	Issue Fee Payment Verified
10-30-1998	Drawing(s) Processing Completed
10-30-1998	Drawing(s) Matched to Application
10-22-1998	Drawing(s) Received at Publications
10-21-1998	Mallroom Date of Drawing(s)
07-14-1998	Mail Notice of Allowance
07-14-1998	Notice of Allowance Data Verification Completed
07-08-1998	Date Forwarded to Examiner
06-29-1998	Amendment after Final Rejection
06-29-1998	Request for Extension of Time - Granted
06-25-1998	Examiner Interview Summary Record (PTOL - 413)
06-10-1998	Change in Power of Attorney (May Include Associate POA)
03-04-1998	Mail Final Rejection (PTOL - 326)
03-03-1998	Final Rejection
03-02-1998	Date Forwarded to Examiner
02-20-1998	Continuing Prosecution Application - Continuation (ACPA)
02-20-1998	Mail Express Abandonment (During Examination)
02-20-1998	Express Abandonment (during Examination)
12-24-1997	Mail Final Rejection (PTOL - 326)
12-23-1997	Final Rejection
11-21-1997	Date Forwarded to Examiner
11-10-1997	Response after Non-Final Action
09-24-1997	Mail Non-Final Rejection
09-18-1997	Non-Final Rejection
02-04-1997	Case Docketed to Examiner in GAU
01-10-1997	Transfer Inquiry
12-05-1996	Application Captured on Microfilm
10-03-1996	Initial Exam Team nn

[Close Window](#)

EXHIBIT U

Carl Winefordner

From: JFOREMANTACHLAW@aol.com
Sent: Wednesday, October 03, 2007 12:36 PM
To: Carl Winefordner
Subject: Re: FW: Patents and Trademarks
Attachments: status-list.SLIP-PATENTS.pdf

Dear Carl: Attached is an updated list for your patents. I have not yet finished the trademark list, that's next. I will respond to each of your questions.

1. Will add info to updated trademark list shortly
2. SLIP-20 Issued and SLIP-20/CIP is pending.
3. I have found a problem with the maintenance fees for SLIP-7 (toy submarine) and SLIP-21 (clipless bicycle pedal) and I am trying to correct them as I did for the item 4 (discussed below).
4. Carl I found out that the Patent Office website lists the annuity unpaid. However, to correct the situation I filed a petition online and paid the petition and annuity fee which is automatically granted. I have to research some more and contact the maintenance division to further find out why I listed it paid and they did not. In any case it is now paid or again paid.

I am trying my best to get these done as quickly as possible for you.

Best regards, Janis

See what's new at AOL.com and Make AOL Your Homepage.

EXHIBIT V

CALIFORNIA CRANK BROTHERS, INC.
 small entity
 California corporation; county of Orange

October 3, 2007

Patents and Patent Applications

Code SLIP	Country	Patent No./ Issue Date	Serial No./ Filing Date	Title	Inventor(s)	Priority/Related Elix	Comments/Instructions
2	USA	5,857,509 10-11-1999	08/080,766 07-15-1996	Improved Manual Air Pump Having Selectable High Volume and High Pressure Modes	Frank Hermanson Carl Winfordner	None	11.5 yr. priority date 07-15-1996 expires 07-15-2011
2AIP	USA	6,059,243 07-27-2000	08/049,008 08-21-1997			08/030,769, 200w (SLIP-2)	11.5 yr. priority date 08-21-1997 expires 08-21-2008
3	USA	5,857,509 01-12-1999	08/0718,766 09-25-1996	Improved Bicycle Tire Lever	Carl Winfordner Frank Hermanson	None	11.5 yr. priority date 07-15-1996 expires 07-15-2011
3AIP	PCT	—	PCT/US97/17161 08-24-1997			08/0718,766, 200w Patent No. 5,857,509 (SLIP-3)	Abandoned, no foreign
5	USA	—	08/030,766 05-14-1998	Locking Water Bottle For Bicycles	Frank Hermanson Carl Winfordner	None	Abandoned
5AIP	USA	6,059,243 05-09-2000	08/108,361 06-29-1998			08/030,766 (SLIP-5)	11.5 yr. priority date 05-14-1998 expires 05-14-2009
6	USA	6,851,189 02-08-2005	10/375,243 02-27-2003	Method Of Fabricating A Clipless Bicycle Pedal	Frank Hermanson Carl Winfordner	Taiwan and PCT	3.5 yr. priority date 02-08-2003 7.5 yr. priority date 02-08-2003 11.5 yr. priority date 02-08-2003 expires 02-27-2013
6	TAIWAN	—	95104809 05-19-2004			10/375,243, 200w Patent No. 6,851,189 (SLIP-6)	02-25-2007 exam request above

Code	Country	Patent No./ Issue Date	Serial No./ Filing Date	Title	Inventor(s)	Priority/Related Files	Comments/Instructions
6PCT	PCI	---	PCT/US2004/005842 02-26-2004			10375243, now Patent No. 6,851,185 (SLIP-5)	Completed
6PCT	EPO	---	04715134.5				Yearly annuity due 10-27
8	USA	---	10/196051 07-16-2003	Bicycle Brake Device	Frank Hermannsen Carl Winesfordner	Name	Alameda 12 per office
9	USA	---	10/412197 04-12-2003	Bicycle Crank Arm	Frank Hermannsen Carl Winesfordner	Name	8-24-06 response to third office action - sent to Washington available to interview Examiner
9	TAIWAN	---	93109571 04-05-2004				04-05-2007 exam due
9PCT	PCI	---	PCT/US2004/008859 03-23-2004			10412197 (SLIP-3)	completed
9PCT	EPO	---	04759757				Yearly annuity due 04-12
20	USA	7,225,705 06-03-2007	10/872105 03-16-2003	Bicycle Pedal And Crank Apparatus	Carl Winesfordner Frank Hermannsen	Name	2.5 yr annuity due 12-05-2010 7.5 yr annuity due 12-05-2010 11.5 yr annuity due 12-05-2010 exam 03-15-2004
20CIP	USA	---	107312615 02-15-2004			10802105 (SLIP-20)	Pending, waiting for first office action
20CIP	TAIWAN	---	94187557 01-13-2003			10302105 (SLIP-20) and 10312615 (SLIP-20CIP)	03-14-2008 exam due date
20CIP	PCI	---	PCT/US2003/008825 05-16-2003			10407107 (SLIP-20) and 10312615 (SLIP-20CIP)	Alameda 12

Code SLP	Country	Patent No./ Issue Date	Serial No./ Filing Date	Title	Inventor(s)	Priority/Related Files	Comments/Instructions
21	USA	6,203,895 03-27-2001	09/25/1709 09-08-1999	Clipless Bicycle Pedal	Frank Hermanson Carl Winefordner	None	3.5 yr. priority due 09-27-2004 7.5 yr. priority due 08-27-2008 11.5 yr. priority due 09-27-2012 expires 09-27-2019
22	USA		11/738,114 08-26-2005	Bicycle Pedal	Frank Hermanson Carl Winefordner	None	Pending, waiting for first office action
23	USA		PC 19/800/1/006 09-18-2008				11-26-07 National Ouband Takes due
24	USA		11/220,896 09-06-2003	Steering Bearing Assembly For Bicycles	Frank Hermanson Carl Winefordner	None	11-14-2007 Response to first office action due
25	USA		11/546,709 10-11-2006	Bicycle Wheel	Frank Hermanson Carl Winefordner		10-11-2007 PCT & Taiwan due
26	USA		11/657,751 01-25-2007	Motorcycle Foot Peg and Boot Clear Assembly	Steve L. Hoshinaka Frank Hermanson Carl Winefordner Andrew Erick		01-25-2008 PCT & Taiwan due
A	USA	DES 437,541 02-13-2001	11/732,984 08-05-2007	Quick Release Camming Mechanism	Carl Winefordner Frank Hermanson		04-05-2009 PCT & Taiwan due
	USA		129,276 09-08-2000	Multi-tool device	Frank Hermanson Carl Winefordner	None	Expires 02-13-2015

EXHIBIT W



United States
Patent and
Trademark Office

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Patent Bibliographic Data		07/21/2010 04:42 PM
Patent Number:	6205885	Application Number:
Issue Date:	03/27/2001	Filing Date:
Title:	CLIPLESS BICYCLE PEDAL	
Status:	APC status indicates patent expired on: 03/27/2009	
Window Opens:	03/27/2004	Surcharge Date:
Fee Amt Due:	\$0.00	Surchg Amt Due:
Fee Code:		Total Amt Due:
Surcharge Fee Code:		
Most recent events (up to 7):	05/04/2009 Refund - Payment of Maintenance Fee, 4th Yr, Small Entity. 05/04/2009 Refund - Surcharge, Petition to Accept Pymt After Exp, Unavo 05/04/2009 Refund - Payment of Maintenance Fee, 6th Yr, Small Entity. 06/04/2009 Refund - 7.5 yr surcharge - late pmt w/in 6 mo, Small Entity 06/03/2009 Petition Related to Maintenance Fees Denied/Dismissed. 10/15/2008 Petition Related to Maintenance Fees Granted. 07/31/2008 Petition Related to Maintenance Fees Filed. --- End of Maintenance History ---	
Address for fee purposes:	HAYNES AND BOONE, LLP IP Section 2323 Victory Avenue Suite 700 Dallas, TX 75219	
NOTE: All USPTO fees are subject to change. If you are making a payment by mail or fax, please visit this link or contact the Maintenance Fee Branch (571-272-6500) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.		
Run Another Query		

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EXHIBIT X

From: Carl Winefordner [carl@crankbrothers.com]
Sent: Friday, December 18, 2009 3:03 PM
To: Chen, Tom; McNally, Annie
Subject: Fwd: Patents and Patent Applications in the name of Crank Brothers
Attachments: General situation CBs - IP @ 15.12.2009.xlsx

Dear Tom:

Please see the below email from APTA, and the attachment, and then see my reply to him in blue. Please note that there is a request to you in my reply to him.

Let me know if you have any questions or comments.

Possibly, I have straightened out the confusion where APTA was asking you for files that they should not have been requesting.

Best regards,

Carl

Dear Dr.ssa Giulia Bordinon:

Thank you for your email.

You asked about whether or not APTA should handle the patents shown in green. In general, I believe the procedure we are to follow is that Haynes and Boone handle all US patents, and APTA handle all other patents. With that in mind, the first green item: Method of Fabricating A Clipless Bicycle Pedal application # 04715134.5 should be handled by APTA because this patent is not filed in the US. I will ask Haynes and Boone to send you the file on this patent, as it appears that perhaps you do not have it.

However, the bottom two green items (pump and wheel) should be handled by Haynes and Boone, because they are US only.

Regarding the bottom yellow item, the Clipless Bicycle Pedal (US patent number 6205865) should be handled by Haynes and Boone, as it is a US patent. Also, it is not abandoned, nor should it be abandoned. Our previous patent attorney made a mistake and did not pay the maintenance fee on time which caused it to be briefly shown as abandoned, but the that patent attorney petitioned to the USPTO and were able to pay the fee and make the patent active again.

Best regards,

Carl
Carl Winefordner

----- Forwarded message -----

From: Giulia Bordinon <bordinon@aptalaw.com>
Date: Tue, Dec 15, 2009 at 8:58 AM
Subject: Patents and Patent Applications in the name of Crank Brothers
To: Carl Winefordner <carl@crankbrothers.com>, Stefano Segato <stefano.segato@selleroyal.com>, Barbara Bigolin <barbara.bigolin@selleroyal.com>
Cc: Studio Legale Feltrinelli <feltrinelli@feltrinelli-brogi.com>, fuochi@aptalaw.com

Dear Sirs,

This is to send you the enclosed updated database of patents in the name of CrankBrothers,

7/13/2010

We would like to underline that the lines filled in orange concerns to changes in the status of patents in respect to your database and the lines filled in green concerns to patents or patents applications that were not present in your database.

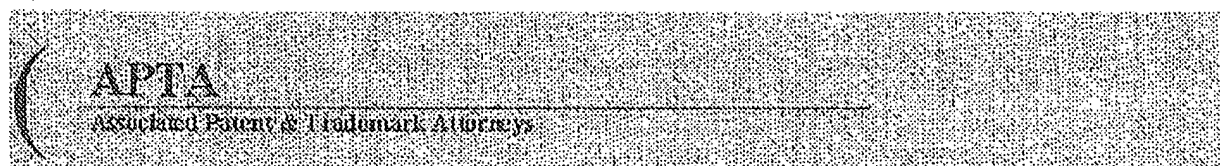
We kindly ask you if we have to handle also the applications highlighted in green.

Thank you for your collaboration.

We remain at your disposal for any further information you may need.

Best regards.

- Dr.ssa Giulia Bordignon -



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Tel. 02.54115744	Tel. 045.8344891	Tel. 051. 245560	Tel. 039.2229757	Tel. 0444.235036 Fax 0444.235005	Tel. 049.723751
Fax 02.54126114	Fax 045.8350699	Fax 051.4214218	Fax 039.359848		Fax 049.723354

7/13/2010

Web site: www.antalaw.com

--
Carl Winefordner
crankbrothers engineering

7/13/2010

EXHIBIT Y

McNally, Annie

From: McNally, Annie
Sent: Wednesday, February 17, 2010 9:16 AM
To: Chen, Tom
Subject: RE: Patent in the name of Crank Brothers - Further information

Just left another message. The petition office has assigned a person (Steven Brantley 571-272-3203) to handle this case, so there is progress.

From: McNally, Annie
Sent: Tuesday, February 16, 2010 3:39 PM
To: Chen, Tom
Subject: RE: Patent in the name of Crank Brothers - Further information

I haven't forgotten about this. The patent office was closed most of last week.

From: Chen, Tom
Sent: Tuesday, February 16, 2010 3:37 PM
To: McNally, Annie
Subject: RE: Patent in the name of Crank Brothers - Further information

Please keep checking on this. Thanks.

From: McNally, Annie
Sent: Monday, January 25, 2010 9:47 AM
To: Chen, Tom
Subject: RE: Patent in the name of Crank Brothers - Further information

Talked to Michael Eason at the petition branch. She couldn't figure it out since there isn't much electronically. She need to pull the file and will call me back.

From: Chen, Tom
Sent: Friday, January 22, 2010 5:05 PM
To: McNally, Annie
Subject: FW: Patent in the name of Crank Brothers - Further information

Please call the Maintenance Fee Branch (571-272-6500) to confirm when this patent actually expired. It appears to have expired March 27, 2009. However, the attached statement shows that the 4th year maintenance fee was refunded, so if the 4th year maintenance was not paid, then the patent may have expired March 27, 2005. So, basically check to see if the 4th year maintenance fee was paid. Thanks.

Tom

From: Chen, Tom
Sent: Friday, January 22, 2010 4:15 PM
To: McNally, Annie
Subject: FW: Patent in the name of Crank Brothers - Further information

Annie,

Please get me this file ASAP. Just talked to Carl, and he believes all files, including this one, was sent to us. The confusion is that the statement shows the Petition was Granted on Oct. 15, 2008 but then denied/dismissed June 9, 2009.

Tom

7/14/2010

From: McNally, Annie
Sent: Thursday, January 21, 2010 9:45 AM
To: Chen, Tom
Subject: RE: Patent in the name of Crank Brothers - Further information

This is not good. Prior attorney filed a petition revive for unavoidable abandonment and the petition was denied in 06/09. The decision was mailed to the prior attorney. The patent stands abandoned.

The patent expired on 03/27/09. I think the time limit to revive is 2 years from expiration (also the statute of limitation to bring infringement lawsuits). So we could suggest to revive for unintentional. We did an estimate for Printronix last year, I think the total cost is around \$3000 (not sure if they get Small Entity discount for these). Please double check the time limit again before replying to the client.

The statement from the USPTO is attached.

From: Chen, Tom
Sent: Thursday, January 21, 2010 9:13 AM
To: McNally, Annie
Subject: FW: Patent in the name of Crank Brothers - Further information

Annie,

Please check on item 2) below and respond when you have some information. Thanks.

Tom

From: Giulia Bordinon [mailto:bordinon@aptalaw.com]
Sent: Thursday, January 21, 2010 1:42 AM
To: Chen, Tom
Cc: McNally, Annie; 'Studio Legale Feittrinelli'; fuochi@aptalaw.com
Subject: R: Patent in the name of Crank Brothers - Further information

Dear Mr Chen,
 with reference to our previous communications, this is to give you the following other information:

1) Our ref. for the following US and EPC cases are:

APTA ref.: 18174	Compact Manual Air Pump Having Selectable High Volume And High Pressure Models	Filing date: 21/04/1997	Application Number: 08/545,068	Grant date: 22/02/2000	Patent number: US 6,027,318	Inventors: Frank Hermanson; Carl Winefordner
APTA ref.:16175 Cbros ref.:70814.39 Attorney ref.:M-17599 US	Bicycle wheel	Filing date: 11/10/2006	Application Number: 11/546399	Grant date: 22/12/2008	Patent number: US 7635170	Inventors: Hermanson; Frank . et al
APTA ref.:16173 Attorney ref.: M-17598 EPC	Method Of Fabricating A Clipless Bicycle Pedal	Filing date: 30/09/2004	Application Number: EP 04715124 5	Publication date: 10/03/2004	Publication number: EP1535070	Inventors: Frank Hermanson; Carl Winefordner

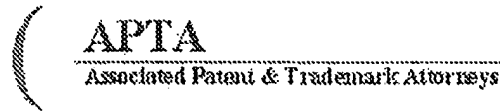
Also for these cases, APTA S.r.l will handle directly annuity fee payments. We confirm that you could remove these and the previous communicated cases from your docket.

- 2) As for US patent No. US 6205885 (O ref. 16001 Y ref. 51UP-30), Mr Winefordner informed us on December 19, 2009 that "Regarding the bottom yellow item, the Clipless Bicycle Pedal (US patent number 6205885) should be handled by Haynes and Boone, as it is a US patent. Also, it is not abandoned, nor should it be abandoned. Our previous patent attorney made a mistake and did not pay the maintenance fee on time which caused it to be briefly shown as abandoned, but the that patent attorney petitioned to the USPTO and were able to pay the fee and make the patent active again". Could you please let us know if you have received some confirmation about the late payment from USPTO?

7/14/2010

Thank you for your collaboration.
Best regards.

- Dr.ssa Giulia Bordinon -



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Fax 02.54126114	Fax 045.8350880	Fax 051.4214218	Fax 059.593648	Fax 0444.225005	Fax 049.723354

Web site: www.aptalaw.com

Da: Chen, Tom [mailto:Tom.Chen@haynesboone.com]

Inviato: martedì 15 dicembre 2009 18.46

A: Giulia Bordinon

Cc: McNally, Annie; Studio Legale Feltrinelli; fuochi@aptalaw.com

Oggetto: RE: Patent in the name of Crank Brothers - New Patent representative O. ref.: 10508 SAF/GB/mb

Dear Dr. Bordinon,

We acknowledge your instructions. For the U.S. and foreign annuities/maintenance fees, do you want us to docket and send reminders as needed to you or can we remove these items from our docket?

For US patent application No. 11/732894 (HNB Ref. 70614.00022; APTA ref. 14995): The Patent Office did not register our change of POA, so we did not receive Notice of Allowance. Thank you for bringing this to our attention. We will report this out to Crankbrothers and ask for instructions today.

For US patent application No. 11/136134 (HNB Ref. 70614.00024; APTA ref. 14995): We see that the Patent Office issues a communication today, but it is not available electronically yet. We should be receiving this within the next few days and will let you know. Regarding the divisional, we are still determining whether one should be filed (there was a restriction requirement in the current application and a few of the claims were withdrawn). However, since this application has not been allowed, we have plenty of time to file a divisional if needed. We will know more once we receive the next Office Action. So, the Dec. 19 date is not a hard date, and we do not plan on filing a divisional by that date, although we may yet still file a divisional at a later date.

Thank you.

Regards,
Tom

From: Giulia Bordinon [mailto:bordinon@aptalaw.com]

Sent: Tuesday, December 15, 2009 9:40 AM

To: Chen, Tom

Cc: McNally, Annie; 'Studio Legale Feltrinelli'; fuochi@aptalaw.com

Subject: R: Patent in the name of Crank Brothers - New Patent representative O. ref.: 10508 SAF/GB/mb

7/14/2010

Dear Mr Chen,
with reference to your database sent on November 28, 2009, we would like to inform you that the following cases will be handled directly by APTA S.r.l.:

1. Taiwanese case Cbros ref. 70614.00012 (O. ref. 14984) Application No. 93104809;
2. Taiwanese case Cbros ref. 70614.00015 (O. ref. 14987) Application No. 93109371;
3. European case Cbros 70614.00036 (O. ref. 16007) Application No. 04759737.2 entitled "Bicycle crank arm";
4. European case Your ref. M-17598 Application No. 04715134.5 entitled "Method of fabricating a clipless bicycle pedal".

We would like to inform you also that we will handle directly all annuity fees to be paid for foreign and US cases in the name of Crank Brothers.

Our ref. for US cases are the following:

Cbros ref.	APTA ref.
70614.00016	14988
70614.00022	14993
70614.00024	14995
70614.00025	14997
70614.00030	16001
70614.00034	16005
70614.00037	16008

We kindly ask you to record them and to report them in your further communications.

We would like to kindly ask you the following questions:

1. US patent application No. 11/722894 Cbros ref. 70614.00022 APTA ref. 14993 has received the Notice of Allowance with corresponding fees due before January 16, 2010. Have you already communicated it to Crank Brothers? Have there fees been duly paid?
2. US patent application No. 11/138134 Cbros ref. 70614.00024 APTA ref. 14995: you have indicated that you are awaiting an office action and preparing a divisional application if possible (by December 19, 2009). We kindly ask you to inform us promptly about these actions.

Please acknowledge safe receipt of this communication and provide us with the reply to the above-questions.

Thank you for your collaboration.
Best regards.

- Dr.ssa Giulia Bordignon -



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Fax 0444.235030

25137 Padova
Via B. Castelletti, 56
Tel. 049.723751
Fax 049.723751

Web site: www.aptalaw.com

7/14/2010

Da: Chen, Tom [mailto:Tom.Chen@haynesboone.com]
Inviato: lunedì 23 novembre 2009 19:54
A: Martina
Cc: Giulia Bordinon; McNally, Annie
Oggetto: RE: Patent in the name of Crank Brothers - New Patent representative O. ref.: 10508 SAF/GB/mb

Dear Martina,

Please find the list of U.S. cases handled by us, with due dates shown in bold. Please let us know if you have any questions.

Regards,
Tom

From: Martina [mailto:martina@aptalaw.com]
Sent: Thursday, November 19, 2009 11:57 PM
To: Chen, Tom
Cc: 'Giulia Bordinon'
Subject: I: Patent in the name of Crank Brothers - New Patent representative O. ref.: 10508 SAF/GB/mb
Importance: High

R E M I N D E R

k.a.: Mr. Tom Chen

Dear Mr. Chen,

we refer to our e-mail below and we kindly ask you to let us have a short report of all US cases handled by your office for Crank Brothers, underlining the urgencies, as soon as possible.

We thank you for your cooperation.

Best Regards,

The Secretary

Da: Martina [mailto:martina@aptalaw.com]
Inviato: martedì 3 novembre 2009 9:57
A: 'tom.chen@haynesboone.com'
Cc: 'Giulia Bordinon'
Oggetto: Patent in the name of Crank Brothers - New Patent representative O. ref.: 10508 SAF/GB/mb

O. ref.: 10508 SAF/GB/mb

k.a.: Mr. Tom Chen

Please see the enclosed letter.

Acknowledge safe receipt of this letter.

Best Regards,
The Secretary



APTA

Associated Patent & Trademark Attorneys

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- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
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